

## HF1355 - 1UE - Marijuana Amounts and Penalties; Modifications

Chief Author: **Aisha Gomez**  
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**  
 Date Completed: **3/18/2022 4:43:00 PM**  
 Lead Agency: **Supreme Court**  
 Other Agencies:  
     Corrections Dept                      Public Safety Dept  
     Sentencing Guidelines  
     Comm

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

State Cost (Savings)		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>						
General Fund	-	-	(38)	(101)	(126)	
<b>Public Safety Dept</b>						
General Fund	-	-	208	191	191	
Restrict Misc. Special Revenue	-	-	14	14	14	
Trunk Highway	-	-	168	168	168	
<b>State Total</b>						
General Fund	-	-	170	90	65	
Restrict Misc. Special Revenue	-	-	14	14	14	
Trunk Highway	-	-	168	168	168	
<b>Total</b>	-	-	<b>352</b>	<b>272</b>	<b>247</b>	
<b>Biennial Total</b>			<b>352</b>		<b>519</b>	

Full Time Equivalent Positions (FTE)		Biennium			Biennium	
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>						
General Fund	-	-	(.4)	(1.1)	(1.4)	
<b>Public Safety Dept</b>						
General Fund	-	-	1	1	1	
Restrict Misc. Special Revenue	-	-	-	-	-	
Trunk Highway	-	-	2	2	2	
<b>Total</b>	-	-	<b>2.6</b>	<b>1.9</b>	<b>1.6</b>	

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Alyssa Holterman Rosas    **Date:** 3/18/2022 4:43:00 PM

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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
<b>Dollars in Thousands</b>		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
<b>Corrections Dept</b>						
General Fund	-	-	(38)	(101)	(126)	
<b>Public Safety Dept</b>						
General Fund	-	-	208	191	191	
Restrict Misc. Special Revenue	-	-	14	14	14	
Trunk Highway	-	-	168	168	168	
<b>Total</b>	-	-	<b>352</b>	<b>272</b>	<b>247</b>	
<b>Biennial Total</b>			<b>352</b>		<b>519</b>	
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Corrections Dept</b>						
General Fund	-	-	(38)	(101)	(126)	
<b>Public Safety Dept</b>						
General Fund	-	-	208	191	191	
Restrict Misc. Special Revenue	-	-	-	-	-	
Trunk Highway	-	-	168	168	168	
<b>Total</b>	-	-	<b>338</b>	<b>258</b>	<b>233</b>	
<b>Biennial Total</b>			<b>338</b>		<b>491</b>	
<b>2 - Revenues, Transfers In*</b>						
<b>Corrections Dept</b>						
General Fund	-	-	-	-	-	
<b>Public Safety Dept</b>						
General Fund	-	-	-	-	-	
Restrict Misc. Special Revenue	-	-	(14)	(14)	(14)	
Trunk Highway	-	-	-	-	-	
<b>Total</b>	-	-	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>	
<b>Biennial Total</b>			<b>(14)</b>		<b>(28)</b>	

**HF1355 - 1UE - Marijuana Amounts and Penalties; Modifications**

Chief Author: **Aisha Gomez**  
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**  
 Date Completed: **3/18/2022 4:43:00 PM**  
 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

<b>State Cost (Savings)</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-

<b>Full Time Equivalent Positions (FTE)</b>		<b>Biennium</b>			<b>Biennium</b>	
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>		-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
	Total	-	-	-	-	-
	Biennial Total			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
	Total	-	-	-	-	-
	Biennial Total			-		-
<b>2 - Revenues, Transfers In*</b>						
	Total	-	-	-	-	-
	Biennial Total			-		-

### Bill Description

HF1355-1UE adds definitions to chapter 152 for "marijuana flower" and "nonflower marijuana;" amends the definition of "mixture," and "drug paraphernalia" as they apply to marijuana; and amends the definition of "small amount" to mean 42.5 grams or less of marijuana flowers or 8 grams or less of any nonflower marijuana mixture.

The bill amends the controlled substance criminal provisions at sections 152.021 (1<sup>st</sup> Degree possession), 152.022 (2<sup>nd</sup> Degree possession, and 152.023 (3<sup>rd</sup> Degree possession) to provide that the weight of fluid used in a water pipe may not be considered in measuring the weight of a marijuana mixture.

The bill amends section 152.025 (5<sup>th</sup> Degree) to modify the marijuana offenses, making it a gross misdemeanor to possess more than 42.5 grams but not more than 85 grams of marijuana flowers, or more than 8 grams but not more than 16 grams of any nonflower marijuana mixture; and amends section 152.027 to remove the requirement in subdivision 4 that a defendant convicted of possession of a small amount of marijuana be required to participate in a drug education program, and to eliminate the misdemeanor level offenses.

The bill amends sections 152.0271 (Other Controlled Substance Offenses) and 260B.198 (Dispositions; Delinquent Child) to add a reference to subdivisions 1-3, and 5-7 of section 152.027, eliminating the requirement that possession of a small amount of marijuana offenses under subdivision 4 be reported by the court to the commissioner of public safety.

The bill amends the provisions in section 152.18, subdivision 3 governing expungement of certain marijuana offenses to provide for a petition and order for expungement for violations of section 152.025 that occurred before August 1, 2022 where the violation would have been a petty misdemeanor under section 152.027, subdivision 4 in effect on August 1, 2022; and to add a provision that expungements under that section restore a person's ability to possess, receive, ship, or transport firearms and handle firearms and ammunition. The bill amends section 609.165, subdivisions 1a (felons ineligible to possess firearms or ammunition) and 1b (violation and penalty) to add a reference to restoration of rights under section 152.18, subdivision 3.

The bill adds at section 152.325 a new affirmative defense to marijuana possession charges that the defendant was enrolled in the registry program under sections 152.22 to 152.37.

The bill adds a new subdivision 1a to section 609A.02 providing that records related to petty misdemeanor violations of section 152.027, subdivision 4, or 152.092 involving marijuana-related drug paraphernalia shall be sealed without the filing of a petition as provided in section 609A.027, and adds to new section 609A.027 providing for expungement of those offenses without a petition one-year after conviction and payment of any fines/fees, or dismissal.

### Assumptions

Regarding the amendment of criminal offenses, it is unknown whether overall this will result in a decrease or no significant change in the number of criminal cases involving cannabis that are filed with the court or the judicial branch resources required to process these cases. Cases filed alleging violations of the marijuana laws may include other criminal charges so in general it cannot be assumed that the changes to the marijuana laws will significantly reduce the judicial branch resources required to process these cases.

It is assumed that the provisions requiring the judicial branch to expunge certain case records would require Supreme

Court review and approval. The Legislature has long acknowledged that access to judicial-branch records “is governed by rules adopted by the Supreme Court.” Minn. Stat. § 13.90, subd. 2 (2020). It is also assumed that if the court implements some or all of the provisions of this bill, the court may implement additional limitations regarding the cases that qualify for expungement. For example, if a case was dismissed after a finding of incompetency to proceed under Minn. R. Crim. P. 20.01, subd. 6(b), the case would qualify for automatic expungement under the provisions of the bill, but the court would likely retain a public record of the case to ensure the record remains accessible in response to any firearms eligibility background check of the National Instant Criminal Background Check System (NICS).

It is also assumed that because single charges cannot be readily expunged from a case, and expungement is a remedy and process that applies to an entire case, a person is only entitled to expungement under these provisions if all offenses on the case qualify for expungement under the provisions of this bill. If any non-marijuana offenses were charged in the complaint or citation, or in any other way the case does not qualify, the case remains public unless an expungement under chapter 609A is otherwise ordered.

It is assumed that the court would implement an automated review of its case management system to identify cases that include only offenses that qualify for expungement and would use automation to seal/expunge those cases. It is assumed the court would use existing automation that can be employed without a significant project or effort. The judicial branch would absorb that work. It is also assumed that if section 152.092 is not amended to have a separate paragraph for marijuana-related offenses, the judicial branch will either implement an expungement process that applies to all petty misdemeanor violations under that section, or none, as there would be no way to automate the process otherwise. It is unclear whether the expungement provisions are retroactive, but it is assumed they may be implemented that way if that is required in order to make the automation work.

It is assumed that the provisions of this bill could reduce the number of expungement petitions filed with the district courts under section 609A.03. However, based on judicial branch data only approximately 3% of all expungement petitions filed are for cases with only petty misdemeanor offenses, and the percent is even less for cases with only the petty misdemeanor offenses covered by the provisions of this bill. Thus, it is assumed that overall the provisions of the bill will not significantly decrease the number of expungement petitions filed with the court. Similarly, the impact on expungement filing fee revenue is unknown but not anticipated to be significant.

### **Expenditure and/or Revenue Formula**

Although it is possible that expungement filing fee revenue may be reduced, it is unknown whether that will occur and if so by how much. Based on 3 years of judicial branch data (not including 2020 which had an unprecedented decrease in case filings and fee revenue), an average of \$277,431 in filing fee revenue is generated annually from the filing of expungement petitions.

The provisions of this bill are not anticipated to have a significant fiscal impact on the judicial branch.

### **Long-Term Fiscal Considerations**

None

### **Local Fiscal Impact**

### **References/Sources**

#### **Agency Contact:**

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## HF1355 - 1UE - Marijuana Amounts and Penalties; Modifications

Chief Author: **Aisha Gomez**  
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**  
 Date Completed: **3/18/2022 4:43:00 PM**  
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Dollars in Thousands					
General Fund	-	-	(38)	(101)	(126)
Total	-	-	(38)	(101)	(126)
Biennial Total			(38)		(227)

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	(.4)	(1.1)	(1.4)
Total	-	-	(.4)	(1.1)	(1.4)

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Jim Carlson      **Date:** 3/14/2022 11:15:44 AM  
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### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
General Fund	-	-	(38)	(101)	(126)	
<b>Total</b>	-	-	<b>(38)</b>	<b>(101)</b>	<b>(126)</b>	
<b>Biennial Total</b>			<b>(38)</b>		<b>(227)</b>	
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	-	(38)	(101)	(126)	
<b>Total</b>	-	-	<b>(38)</b>	<b>(101)</b>	<b>(126)</b>	
<b>Biennial Total</b>			<b>(38)</b>		<b>(227)</b>	
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	
<b>Total</b>	-	-	-	-	-	
<b>Biennial Total</b>			-		-	

### Bill Description

The proposed legislation would modify marijuana provisions. It would amend the definition of a small amount of marijuana, define "nonflower marijuana" as the resinous form of marijuana, clarify when the weight of fluid in a water pipe may or may not be considered when determining the 42.5 grams limit for a small amount, clarify penalty provisions, authorize expungement for certain fifth-degree convictions, and except possession or unremunerated sale of a small amount of marijuana as the basis for a child's driver's license revocation.

The proposed legislation would also provide for an affirmative defense to a marijuana possession charge if the defendant was enrolled in the registry program and possessed marijuana to use for a qualified medical condition or was visiting a patient and possessed marijuana for medical use as authorized by the laws or regulations of the patient's jurisdiction of residence. It would also provide that no petition would be necessary for the sealing of records related to petty misdemeanor charges after a one-year waiting period.

### Assumptions

The Minnesota Sentencing Guidelines Commission (MSGC) assumes that due to the pandemic, the cases sentenced in 2020 would not be a fair approximation of the number sentenced in the future. Data from 2019 is used to estimate the impact of this bill.

The MSGC estimates that under the provisions of this bill 43 marijuana flower possession cases would shift from felony to gross misdemeanor levels, 35 resin possession cases would shift from felony to petty misdemeanor levels, and 3 resin possession cases would shift from felony to gross misdemeanor levels.

In total, the MSGC estimates 81 possession cases would shift from felony level to petty or gross misdemeanor offenses. Assuming a 10 percent imprisonment rate, this would result in the reduction of 8 prison beds each year. The estimated prison bed impact would be a reduction of 4 beds in FY2023 and 8 beds in FY2024 and each subsequent year.

There would be a minimal impact on supervision caseloads statewide.

Prison bed costs (savings) are based on a marginal per diem cost of \$41.80 for FY2023, \$42.42 for FY2024, and \$43.18 for FY2025 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual costs (savings) are estimated by multiplying the number of prison beds by the subsequent annual per diem. Unless otherwise noted, prison beds are phased out on a quarterly basis.



Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 including benefits.

This bill would be effective August 1, 2022 and apply to crimes committed on or after that date..

### **Expenditure and/or Revenue Formula**

#### **Costs/(Savings) for Prison Beds - DOC**

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	0	- 4	- 8	- 8
Cost of Prison Beds (in 000s)	\$0	\$0	(\$38)	(\$101)	(\$126)
FTEs	0	0	- 0.4	- 1.1	- 1.4

### **Long-Term Fiscal Considerations**

Savings would continue into subsequent years.

### **Local Fiscal Impact**

There would be some impact to local correctional resources as result of this bill. The MSGC estimates 35 cases each year would switch from felony level to petty-misdemeanors, and 46 cases each year would shift from felony level to gross misdemeanors (81 total cases each year). There may be some savings in local confinement because petty misdemeanors do not receive conditional confinement time, and gross misdemeanors may receive less time than they would as felonies. There may also be some savings in supervision costs because cases switching to petty misdemeanors would not receive probation services, and the cases switching to gross misdemeanors may receive less intense supervision for a shorter period of time than at the felony level.

### **References/Sources**

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

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## HF1355 - 1UE - Marijuana Amounts and Penalties; Modifications

Chief Author: **Aisha Gomez**  
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**  
 Date Completed: **3/18/2022 4:43:00 PM**  
 Agency: **Public Safety Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings	X	
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Dollars in Thousands					
General Fund	-	-	208	191	191
Restrict Misc. Special Revenue	-	-	14	14	14
Trunk Highway	-	-	168	168	168
<b>Total</b>	<b>-</b>	<b>-</b>	<b>390</b>	<b>373</b>	<b>373</b>
<b>Biennial Total</b>			<b>390</b>		<b>746</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	1	1	1
Restrict Misc. Special Revenue	-	-	-	-	-
Trunk Highway	-	-	2	2	2
<b>Total</b>	<b>-</b>	<b>-</b>	<b>3</b>	<b>3</b>	<b>3</b>

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Laura Cecko **Date:** 3/16/2022 4:53:02 PM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>
<b>Dollars in Thousands</b>		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
					<b>FY2025</b>
General Fund	-	-	208	191	191
Restrict Misc. Special Revenue	-	-	14	14	14
Trunk Highway	-	-	168	168	168
<b>Total</b>	-	-	<b>390</b>	<b>373</b>	<b>373</b>
<b>Biennial Total</b>			<b>390</b>		<b>746</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
General Fund	-	-	208	191	191
Restrict Misc. Special Revenue	-	-	-	-	-
Trunk Highway	-	-	168	168	168
<b>Total</b>	-	-	<b>376</b>	<b>359</b>	<b>359</b>
<b>Biennial Total</b>			<b>376</b>		<b>718</b>
<b>2 - Revenues, Transfers In*</b>					
General Fund	-	-	-	-	-
Restrict Misc. Special Revenue	-	-	(14)	(14)	(14)
Trunk Highway	-	-	-	-	-
<b>Total</b>	-	-	<b>(14)</b>	<b>(14)</b>	<b>(14)</b>
<b>Biennial Total</b>			<b>(14)</b>		<b>(28)</b>

**Bill Description**

Section 1: Removes a cross reference.

Section 2: Defines "marijuana flower."

Section 3: Defines "nonflower marijuana" as the "resinous form of marijuana."

Section 4: Modifies the definition of a "small amount" of marijuana as 42.5 grams of marijuana flowers or eight grams or less of any nonflower marijuana mixture. Nonflower marijuana mixtures weighing less than eight grams cannot be considered in determining the 42.5 gram limit.

Section 5: Modifies the definition of drug paraphernalia to include those items that are not specifically denoted under the chapter or federal authorities listed.

Section 6: For first degree controlled substance crimes, the language excludes the weight of fluid used in a water pipe from measuring the weight of a marijuana mixture. For other mixtures, the weight of fluid may not be considered except in cases where the mixture contains four or more fluid ounces of fluid.

Section 7: For second degree controlled substance crimes, the language excludes the weight of fluid used in a water pipe from measuring the weight of a marijuana mixture. For other mixtures, the weight of fluid may not be considered except in cases where the mixture contains four or more fluid ounces of fluid.

Section 8: For third degree controlled substance crimes, the language excludes the weight of fluid used in a water pipe from measuring the weight of a marijuana mixture. For other mixtures, the weight of fluid may not be considered except in cases where the mixture contains four or more fluid ounces of fluid.

Section 9: For an individual convicted of a controlled substance crime in the fifth degree, who has not been previously convicted of a violation of the chapter is guilty of a gross misdemeanor, with the exception of a small amount of marijuana,

unless the amount is 1) between 42.5 and 85 grams of marijuana flowers or 2) between eight and 16 grams of any nonflower marijuana mixture.

Section 10: Modifies the crime of a possession or sale of small amounts of marijuana to make it solely a petty misdemeanor.

Section 11: Modifies driver's license revocation grounds to comply with the changes in the bill.

Section 12: Limits the crime of conspiracy to commit marijuana related crimes to on those that are related to felonies.

Section 13: Allows for a petition to be filed with the court for the expungement of certain petty misdemeanors related to the new definition of small amount of marijuana offenses, including violations of 152.025 that occurred previously but meet the new definition under 152.027, Subd. 4. Requires the restoration of one firearms rights in conjunction with the expungement order.

Section 14: Provides an affirmative defense to the charge of possession of marijuana for those enrolled in the registry program.

Sections 15-17: Makes applicable cross-reference changes.

Section 18: Requires records related to petty misdemeanor violations of section 152.027, Subd. 4, or 152.092 involving marijuana-related drug paraphernalia to be sealed without the filing of a petition as provide in section 609A.027.'

Section 19: Requires records for certain petty misdemeanors, related to controlled substance violations, be sealed after a one-year waiting period.

## **Assumptions**

### Driver and Vehicle Services

Assume court will no longer notify Department of Public Safety Driver and Vehicle Services (DPS-DVS) when sentencing court finds that an individual convicted of sale or possession of a small amount of marijuana did so while driving a motor vehicle.

Assume courts reported an average of 3,172 convictions to DPS-DVS between 2014-2019 for individuals convicted of sale or possession of a controlled substance while driving a motor vehicle. Assume DPS-DVS cannot determine which controlled substance underlies the conviction and cannot know how many of the convictions are for sale or possession of a small amount of marijuana.

Assume 15% of the convictions reported to DPS-DVS by the court are for possession or sale of a small amount of marijuana. Assume DPS-DVS will revoke 476 less driver's licenses per year. ( $3,172 \times 0.15 = 476$ ).

Assume each driver's license revocation results in a \$30 fee to reinstate the driver's license. Assume DPS-DVS will collect \$14,280 less reinstatement fees each year which will result in a loss of revenue to DPS-DVS ( $\$30 \times 476$  driver's licenses = \$14,280). Assume DPS-DVS can absorb this loss of revenue.

Assume that 40 hours of programming will be needed to configure and test changes to remove statutory basis for driver's license withdrawal. Assume an hourly rate of \$200 for a total programming cost of \$8,000 (40 hours x \$200 per hour = \$8,000). Assume programming costs to be absorbed under the current maintenance and support contract with FAST Enterprises, at no additional cost to DVS.

Assume an effective will be updated to August 1, 2022.

### Minnesota State Patrol

If this bill is passed, the State Patrol will incur a fiscal impact as a result of expungement requests granted by the court as provided in Section 13 of the bill, and the requirement that certain qualifying records be expunged without the filing of a petition as provided for in Sections 18 and 19 of the bill.

Each expungement request the State Patrol receives today takes about two hours to process; ensuring our citation, reporting and CAD record databases are purged while then archiving the records so they are preserved if needed for statutorily authorized purposes.

A look at the past three years plus partial current year (2019, 2020, 2021 and 2 months of 2022) shows that 7,407 citations in total have been issued by the State Patrol for violations that would be eligible for expungement under the language contained in the bill. It is assumed that the number of violations will remain consistent in the future.

Two administrative Office & Admin Specialist Intermediate FTEs will be needed to complete the tasks associated with expunging and archiving, on average, 2,340 records per year. These two positions would be newly hired positions.

There is no additional equipment cost as we have existing laptops and related equipment we would recirculate for use to perform these duties. We also have vacant cubicle space in our headquarters that is being paid for under our current lease agreement.

It is assumed that the effective date of the language will be August 1, 2022.

#### Bureau of Criminal Apprehension

##### *Minnesota Justice Information Systems*

The Criminal History System (CHS) is Minnesota's repository for data on subjects arrested for felony, gross misdemeanor, targeted misdemeanor, and some misdemeanor offenses housed at the Bureau of Criminal Apprehension (BCA). The BCA receives records from law enforcement agencies about adults booked for targeted misdemeanors, gross misdemeanors and felonies as required by Minn. Stat. § 299C.10. These records do not include all petty misdemeanors and misdemeanors.

The BCA currently has 9,360 court counts under Minn. Stat. 152.027, Subd. 4 in CHS, all of which are marijuana offenses. The BCA estimates that 50% of these are individual convictions, resulting in 4,680 potentially applicable convictions under that statute.

The BCA currently has 64,155 court counts under Minn. Stat. 152.092 in CHS. The BCA estimates that 50% of these are individual convictions, resulting in approximately 32,078 potentially applicable convictions under Minn. Stat. 152.092. These conviction counts include records for crimes related to any drug paraphernalia, which is not differentiated by drug.

However, in 2019, the Sentencing Guidelines Commission's Report on Controlled Substance Offense, published in November of 2021, stated that 7% of drug related offenses were for marijuana. Assuming this stays fairly consistent, 7% of those unduplicated offenses noted earlier would be for marijuana, resulting in approximately 2,245 convictions potentially being expunged. In total, there will be approximately 6,925 (4,680+2,245).

It will take 45 minutes per expungement to process the court order and review and amend the criminal history, in accordance with the court order, resulting in a total of 311,625 minutes/5,193.75 hours of work. A criminal history analyst rate will apply to this work at \$39.68 per hour.

The Bureau of Criminal Apprehension (BCA) operates the Statute Service that documents criminal offenses and is used by all portions of the criminal justice community.

The Statute Service will need to be modified to reflect the changes made by the bill. The work to modify the Statute Service is minimal and will be absorbed.

It is assumed that the effective date of the language will be August 1, 2022.

Language on lines 7.5-, references Minn. Stat, 152.15, subdivision 2, clause (5), which has been repealed. As such, the BCA will retain a nonpublic record by sealing the record in CHS.

The BCA will not know if the requirements have been met for any of the sealing of records denoted in section 19. Therefore, the BCA will seal in response to court orders as they are received.

##### *Forensic Science Services*

The Bureau of Criminal Apprehension (BCA) Forensic Science Services (FSS) Drug Chemistry Section provides scientific analysis in criminal cases involving the suspected presence of controlled substances. Testing of this nature is performed on approximately 10,000 cases per year. In 2021, approximately 2,500 items of evidence involved testing for the presence of marijuana and/or delta-9 tetrahydrocannabinol (THC).

Testing for the presence of marijuana and/or delta-9 tetrahydrocannabinol (THC) include weighing evidence, screening and color tests, microscopic analysis (for plant material identification), instrumental analysis (to confirm the presence of THC) and quantitation of THC (to differentiate between marijuana and hemp). These procedures (depending on the evidence type plant or non-plant) are conducted on each piece of evidence until the appropriate weight threshold amount is reached (per current MN Statute), at which point analysis ceases unless case circumstances indicate additional testing is necessary.

Cases involving multiple items of evidence require cumulative weight determinations, chemical tests, instrumental analysis and THC quantitation to reach minimum threshold limits. The addition of new weight thresholds into state statute have the potential to impact the number of examinations needed for some cases.

HF 1355 adds three new weight thresholds that will require additional testing for certain cases.

In 2021, approximately 25 cases involving suspected marijuana and/or THC contained multiples items of evidence that would require testing of additional items in order to meet the new proposed thresholds contained with this bill. An estimated additional 231 items would require testing to reach the proposed thresholds.

A forensic scientist 2 assigned to the Drug Chemistry Section of the MN BSS can conduct, on average, 25-30 marijuana/THC cases annually.

It is assumed that the proposed definition for "Nonflower marijuana" will include liquid forms of THC such as e-cigarette cartridges.

## **Expenditure and/or Revenue Formula**

### **Driver and Vehicle Services**

#### **FY 2023 & Beyond**

#### **Restrict. Misc. Special Revenue - Driver Services Operating Account**

476 less revocations x \$30 reinstatement fees = (\$14,280)

#### **Minnesota State Patrol**

	FTE	Salary Rate	Salary with Fringe	Annual Cost
OASI	2.0	\$24.60	\$40.24	\$168,042.24

FY23 & beyond expenditures from the Trunk Highway Fund: \$168,042.24

### **Bureau of Criminal Apprehension**

#### ***Minnesota Justice Information Systems***

\$39.68 x 5,193.75 hours of work = \$206,088.00

In calculating the amount of time needed to process the work, it was assumed that 11 holidays (88 hours) and 3 weeks of vacation and sick leave (120 hours) would be deducted from the 2,080 available working hours. A reduction to a total available hours of 1,850 per year was used with the difference being time for responding to customers, meetings and reviewing emails and other documentation.

Based on the number of hours worked per year and the requisite hours needed to complete the tasks, it would take approximately 34 months to have an FTE complete the work necessary for the expungements to occur. The cost has been

divided over the course of three years to reflect this, resulting in a cost of \$68,696 per year from the general fund.

#### *Forensic Science Services*

The impact of the additional thresholds for marijuana equals an increase in caseload requiring an additional FTE. The anticipated cost of one FTE (salary plus fringe) for FY23 and FY24 is \$113,690 and \$115,953 respectively from the general fund. This funding would be ongoing.

Training and continuing education for additional staff = \$1,700 annually

The increase in caseload and staff would require additional analytical and testing equipment as well as balances for weighing and computers/software for the additional staff. The estimated additional equipment funding is a one-time amount of \$18,700 in FY23.

The annual expense for analysis supplies for the Drug Chemistry section is approximately \$203,000 and equate to approximately \$21 per item examined. The additional examinations would total approximately \$4,850 per year.

These costs result in a total expense of \$138,940 in the first year and \$122,503 ongoing.

#### **Long-Term Fiscal Considerations**

These positions will continue to be needed into the future.

#### **Local Fiscal Impact**

#### **References/Sources**

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## HF1355 - 1UE - Marijuana Amounts and Penalties; Modifications

Chief Author: **Aisha Gomez**  
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**  
 Date Completed: **3/18/2022 4:43:00 PM**  
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.  
 Reductions shown in the parentheses.

State Cost (Savings)		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Total		-	-	-	-	-
Biennial Total				-		-

Full Time Equivalent Positions (FTE)		Biennium			Biennium	
		FY2021	FY2022	FY2023	FY2024	FY2025
Total		-	-	-	-	-

## LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Jim Carlson      **Date:** 3/10/2022 10:40:36 AM  
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### State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
	Total	-	-	-	-	-
	Biennial Total			-		-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
	Total	-	-	-	-	-
	Biennial Total			-		-
<b>2 - Revenues, Transfers In*</b>						
	Total	-	-	-	-	-
	Biennial Total			-		-

### Bill Description

This bill modifies marijuana provisions. The definition of a small amount of marijuana in Minn. Stat § 152.01 is amended by adding a subdivision 9b that defines “marijuana flower” as the flower, leaves, stems, seeds or plant form of marijuana and subdivision 9c that defines “nonflower marijuana” as the resinous form of marijuana. In Minn. Stat § 152.01 Subd. 16 “small amount” of marijuana is amended to specify that it means 42.5 grams or less of marijuana flowers (no change), or 8 grams or less of a resinous marijuana mixture. It clarifies that resinous marijuana mixtures weighing 8 grams or less may not be considered in determining the 42.5 grams limit for a small amount. In the drug statutes that specify crime elements, the phrase “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” is amended to specify “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 marijuana mixture. For other mixtures, the weight of the fluid may not be considered except in cases where the mixture contains four or more fluid ounces of fluid”.

The penalty provisions in Minn. Stat § 152.025 Subd. 4 are amended to clarify that a small amount of marijuana is not included in the gross misdemeanor penalty in Subd. 4 (a) (1) and a provision 4 (a) (3) is added to specify that the gross misdemeanor penalty applies to first time possession of (i) between 42.5 and 85 grams of marijuana flowers or (ii) between 8 and 16 grams of a resinous marijuana mixture. The provisions in Minn. Stat § 152.027 Subd.4 (a) and 4 (b) providing that persons convicted of sale or possession of small amounts of marijuana be required to participate in a drug education program or chemical dependency evaluation and treatment are stricken as is the provision in 4(c) that states that a person who is convicted of a petty misdemeanor for a small amount of marijuana who willfully fails to comply with the sentence imposed is guilty of a misdemeanor.

The bill also authorizes record expungement for fifth-degree convictions for those whose offenses would be petty misdemeanors under the new law, as well as restoration of gun-possession rights. It also excepts possession or unremunerated sale of a small amount of marijuana as the basis for a child’s driver’s license revocation.

The 1UE version adds a new provision codified as Minn. Stat § 152.325 that provides an affirmative defense to a marijuana possession charge if the defendant was enrolled in the registry program and possessed the marijuana to use for a qualified medical condition or was visiting a patient and possessed the marijuana for medical use as authorized by the laws or regulations of the visiting patient’s jurisdiction of residence. This defense would apply to; a gross misdemeanor possession charge under section § 152.025 subd. 4 (a) (3), or possession charges under 152.027 subdivision 3 or 4.

The 1UE version also amends Minn. Stat § 609A.027 to provide that no petition is necessary for the sealing of records related to a petty misdemeanor charges under 152.027 subdivision 4 after a one year waiting period.

This bill is effective August 1, 2022, and applies to crimes committed on or after that date.

### Assumptions

It is assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 will not be a fair approximation of

cases sentenced in the future; therefore, cases sentenced in 2019 are used instead to estimate the impact of this bill.

The most recent information that MSGC has on marijuana types and amounts is for cases sentenced in 2018. MSGC collected more detailed data for the 425 marijuana cases sentenced in 2018 and found that 326 (77%) were plant cases, 95 (22%) were resinous and 4(1%) were unknown. It is assumed that, in the future, the number of marijuana possession and sale cases will be equal to the number of marijuana possession and sale cases sentenced in 2019, and that the quantities of marijuana involved and the distribution between resinous and plant cases will be like the quantities and the distribution in 2018.

Based on the Minnesota Offense Codes associated with the drug cases sentenced in 2019, there were 367 marijuana cases sentenced; 320 were fifth-degree offenses. Based on the statute of conviction, 74 (23%) of those 320 cases were sale offenses and 246 (77%) were possession offenses. Applying the 2018 percentages for marijuana type to the 246 possession cases in 2019, it is assumed that 77 percent were flower cases (189), and 22 percent (54) were resinous cases.

This bill defines amount levels for petty misdemeanor and gross misdemeanor crimes for marijuana offenses based on the type of marijuana involved. The petty misdemeanor level for plant cases remains the same, less than 42.5 grams. A new petty misdemeanor is established for resinous mixtures of less than 8 grams. A limit for gross misdemeanor offenses is newly established for possession; between 42.5 grams and 85 grams for plant cases and between 8 and 16 grams of resinous mixtures, if the person has no previous chapter 152 convictions. In 2019, 39 percent of the felony fifth-degree marijuana possession cases had a prior drug offense conviction. Accordingly, the number of cases estimated to be eligible to shift from the felony to the gross-misdemeanor level will be reduced by 39 percent. In 2018, 37 percent of the flower possession cases were for amounts less than 85 grams. Therefore, it is estimated that under the provisions of this bill, 37 percent of the assumed 189 fifth-degree plant cases (70 cases) will be eligible by amount to shift from felonies to gross misdemeanors; (reduced by 39% =43 cases). In 2018, 66 percent of the resinous possession cases were for amounts less than 8 grams and 7 percent were for amounts between 8 and 16 grams. Therefore, it is estimated that under the provisions of this bill, 66 percent of the 54 assumed fifth-degree resin possession cases (35 cases) will shift from felonies to petty misdemeanors and 7 percent (4) will be eligible by amount to shift from felonies to gross misdemeanors (reduced by 39% =3 cases). Altogether, it is assumed that 81 cases a year will shift from the felony level to petty or gross misdemeanor offenses (35 resin cases shift to PM + 3 resin cases shift to GM and 43 flower cases shift to GM).

In 2019, 10 percent of the fifth-degree marijuana possession cases received a prison sentence with an average pronounced sentence of 17 months (serve 2/3=11.4 months). Of the cases that did not receive a prison sentence 85 percent received local confinement time with an average pronounced duration of 68 days (serve 2/3=46 days).

### **Expenditure and/or Revenue Formula**

### **Long-Term Fiscal Considerations**

Based on the above assumptions, it is estimated that 81 cases will move from the felony level to misdemeanor levels. With an imprisonment rate of 10 percent, it is estimated that the result will be a reduction of 8 prison beds: 4 beds in FY2023 and 8 beds in FY2024, and every year after. There will also be a reduction in felony-level probation caseloads of 81 cases a year.

### **Local Fiscal Impact**

Based on the above assumptions, it is estimated that 35 cases a year will switch from the felony level to the petty-misdemeanor level, while 46 cases a year will switch from the felony level to the gross misdemeanor level. There may be some savings in local beds because petty misdemeanors do not receive conditional confinement time and the cases switching to the gross misdemeanor level may receive less confinement than they did as felonies. There may also be some savings in supervision costs as the cases switching to the petty-misdemeanor level will not receive probation services and the cases switching to the gross-misdemeanor level may receive less intense supervision for a shorter period of time than at the felony level.

### **References/Sources**

2018-2019 MSGC Monitoring data.

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