

# House Research Act Summary

**CHAPTER:** 160

**SESSION:** 2016 Regular Session

**TOPIC:** Controlled Substances

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## Overview

This act contains a range of modifications to the state's drug sentencing laws. The act: increases the threshold amounts for certain cocaine and methamphetamine crimes; lowers the thresholds for certain marijuana crimes; creates new possession crimes for specified amounts of marijuana plants; creates a new drug kingpin crime; establishes new mandatory minimum prison sentences for certain crimes involving large amounts of controlled substances and/or a firearm or other aggravating factors while eliminating mandatory minimum sentences for lower-level crimes; makes certain mandatory sentences for controlled substance offenses committed with a firearm nonwaivable; creates a lower-level penalty crime for fifth degree controlled substance possession cases involving first-time offenders who possess trace amounts; expands the conditional release program for nonviolent drug offenders; expands the controlled substance stay of adjudication law and makes it mandatory for certain offenders; increases the penalty for repeat drug paraphernalia offenses; and appropriates money to implement the act and for other controlled substance-related purposes, including by establishing and funding a community justice reinvestment account that seeks to capture the savings generated by the act and apply those savings for grants to various programs that target addiction.

### Section

- 1** **Subsequent controlled substance conviction.** Amends the definition of "subsequent controlled substance conviction" in the controlled substances laws. Limits the term to past violations of first or second degree controlled substance crimes (current law includes all felony-level violations of the controlled substances chapter of law). Strikes references to the

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controlled substances stay of adjudication law (Minn. Stat. § 152.18). Maintains the current ten-year lookback period.

**2** **Aggravating factor.** Adds a definition of “aggravating factor” to the controlled substances laws. This term is used in sections 3 and 4.

**3** **First degree controlled substance crime.** Amends both first degree sale and possession offenses.

For the sales crime: increases the threshold for cocaine and methamphetamine from ten to 17 grams, except for offenses involving firearms or two aggravating factors; and lowers the threshold for marijuana from 50 to 25 kilograms (while striking existing language that provides a lower threshold for marijuana offenses occurring in certain locations).

For the possession crime: increases the threshold for cocaine and methamphetamine from 25 to 50 grams, except for offenses involving firearms or two aggravating factors; lowers the threshold for marijuana from 100 to 50 kilograms; and adds a new crime for possession of 500 or more marijuana plants.

Creates a new aggravated first degree crime (i.e., kingpin crime) for specified violations of the first degree sales or possession crime involving large amounts of drugs (100 grams or 500 dosage units), if the offense involves a firearm or two aggravating factors. This offense carries a nonwaivable mandatory minimum prison sentence of at least 86 months.

Offenders who violate what would be considered the new crime, but where there is no firearm involved or the crime does not involve two aggravating factors, would be guilty of a first degree controlled substance crime (but not “aggravated first degree”) and be subject to a mandatory minimum prison sentence of at least 65 months. This sentence may be waived in certain circumstances for a possession offense if the offender has not been previously convicted of a first, second, or third degree controlled substances crime.

**4** **Second degree controlled substance crime.** Amends the second degree controlled substance crime.

For the sales crime: increases the threshold for cocaine and methamphetamine from three to ten grams, except for offenses involving firearms or three aggravating factors; and lowers the threshold for marijuana from 25 to ten kilograms.

For the possession crime: increases the threshold for cocaine and methamphetamine from six to 25 grams; provides for a cocaine and methamphetamine threshold of ten grams for offenses involving firearms or three aggravating factors; lowers the threshold for marijuana from 50 to 25 kilograms; and adds a new crime for possession of 100 or more marijuana plants.

**5** **Third degree controlled substance crime.** Amends the third degree possession crime to increase the threshold for cocaine and methamphetamine from three to ten grams.

Strikes the current mandatory minimum prison sentence for third degree crimes committed by repeat offenders.

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- 6** **Fourth degree controlled substance crime.** Strikes the current mandatory minimum prison sentence for fourth degree crimes committed by repeat offenders.
- 7** **Fifth degree controlled substance crime.** Strikes the current mandatory minimum prison sentence for fifth degree crimes committed by repeat offenders. Creates a new gross misdemeanor offense for possession offenses involving trace amounts of drugs. For non-heroin offenses, the amount is set at less than 0.25 grams or one dosage unit if the drug was possessed in dosage units. For heroin offenses, the amount is set at less than 0.05 grams. Of note, this gross misdemeanor trace amount crime applies only to offenders who have not been previously convicted of a violation of the controlled substances chapter of law (Minn. Stat. ch. 152).
- 8** **Mandatory sentences.** Contains a conforming change.
- 9** **Possession of drug paraphernalia prohibited.** Makes a violation of the drug paraphernalia law a misdemeanor if the offender has violated it twice before. Under current law, a violation is a petty misdemeanor regardless of how many past violations the offender has.
- 10** **Deferring prosecution for certain first-time drug offenders.** Amends the drug offender stay of adjudication law. Expands the law to make third degree controlled substance crime possession offenders eligible. Also, makes the provision mandatory for fifth degree possession offenders who have not previously been convicted of a felony offense or a gross misdemeanor fifth degree controlled substance crime.
- 11, 12, 22** **Conditional release of certain nonviolent controlled substance offenders.** Amend the conditional release program for certain nonviolent controlled substance offenders to make fourth and fifth degree controlled substance sale offenders eligible and to provide that fourth and fifth degree offenders (both possession and sale) would be eligible sooner than other offenders for early release under the program. Repeal the provision in current law that penalizes offenders who are unsuccessful in the program by adding time to their term of imprisonment.
- 13** **Clearinghouse and information center.** Requires the Sentencing Guidelines Commission to keep and report information regarding the impact of statutory changes to the state's controlled substances laws, including those made in this bill.
- 14** **Community justice reinvestment account.** Creates a new account in the special revenue fund known as the community justice reinvestment account. Requires the commissioner of public safety to make grants out of the account for specified purposes related to drug offenders and drug crimes and to report to the legislature every two years on these grants. Appropriates money transferred into the account (see section 19) for the grant program.
- 15** **Duties.** Gives exclusive jurisdiction to county attorneys to prosecute the new fifth degree controlled substance gross misdemeanor trace amount crime (see section 7) except in Hennepin and Ramsey Counties.
- 16, 17** **Drug offenses.** Amend the mandatory minimum sentence law under Minnesota Statutes, section 609.11. Prohibit a court from sentencing a person in disregard of the mandatory minimum for first and second degree controlled substance crimes where the offense involves a firearm. Provide that the two new mandatory minimum sentences created in section 3 (except for the kingpin crime that involves two aggravating factors rather than a firearm) do

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not run consecutively to any other applicable mandatory minimum under Minnesota Statutes, section 609.11.

- 18 Minnesota Sentencing Guidelines.** Specifies changes to the modifications to the sentencing guidelines related to controlled substance offenses that are scheduled to go into effect on August 1. The Sentencing Guidelines Commission had recommended significant substantive changes to the guidelines regarding controlled substance offenses. Of note, under this section, the Commission's proposal to separate the severity level for first degree sales crimes from first degree possession crimes is overridden. In addition, the provision sets the severity level (and thus the presumptive sentences) for the new kingpin crime (section 3) and makes other specified changes to listed presumptive sentences and sentence ranges.
- 19 Transfer; community justice reinvestment account.** Requires the commissioner of management and budget to transfer \$488,000 in fiscal year 2017 and \$461,000 in each fiscal year thereafter into the community justice reinvestment account created in section 14.
- 20 Appropriations.** Appropriates specified amounts to the Department of Public Safety for forensic scientists, equipment and supplies, to the Department of Corrections for new chemical dependency/mental health beds and new chemical dependency release planners, and to the Sentencing Guidelines Commission to implement the bill.
- 21 Reductions in previous appropriations.** Reduces appropriations from the Senate's supplemental budget bill to pay for the appropriations and transfers made in this bill. (This section will likely be repealed by subsequent enactment.)