

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill amends first- through third-degree controlled substance *possession* offenses so that law enforcement/prosecutors may not charge an offense based on the weight of water used in a bong or water pipe. Currently, if a person possesses a controlled substance that is mixed with bong water the charging decision can be based on the total weight of the mixture even if the controlled substance only makes up a small percentage of the mixture. The bill retains law enforcement’s authority to charge controlled substance *sale* offenses based on the total weight of the mixture involved.

This issue was recently litigated *State v. Peck*, 773 N.W.2d 768 (Minn. 2009). In that case, the prosecutor charged defendant Peck with a first degree controlled substance offense because Peck possessed bong water that contained the residue of methamphetamine. The total weight of the mixture was used to charge Peck with the most serious level of drug offense. The Minnesota Supreme Court upheld the charging decision after concluding that the first-degree controlled substance charge was permissible under the current definition of “mixture.”

### Section

- 1**      **Mixture.** Amends the definition of “mixture” in the controlled substances chapter to reflect the changes made below in sections 2 to 4. Under current law, prosecutors may make charging decisions based on the entire weight of a mixture that contains a controlled substance even if the drug is only a small fraction of the mixture. Sections 2 to 4 would change this policy as it relates to first- through third-degree controlled substance *possession* offenses that involve a mixture containing bong water.
- 2**      **Possession crimes.** Amends the offense of **first**-degree controlled substance possession so that the weight of bong water may not be used to determine the level of offense in cases where a person is accused of possessing a “mixture.”
- 3**      **Possession crimes.** Amends the offense of **second**-degree controlled substance possession

so that the weight of bong water may not be used to determine the level of offense in cases where a person is accused of possessing a “mixture.”

- 4 **Possession crimes.** Amends the offense of **third**-degree controlled substance possession so that the weight of bong water may not be used to determine the level of offense in cases where a person is accused of possessing a “mixture.”