

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill amends first- through third-degree controlled substance *possession* offenses and the offense of possession of a small amount of marijuana 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 and possession offenses where there is 4 or more ounces of bong water. 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." This bill was enacted in 2010, but was vetoed by Governor Pawlenty.

### Section

- 1** **Mixture.** Amends the definition of "mixture" in the controlled substances chapter to reflect the changes made below in sections 2 to 5. 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 5 would change this policy as it relates to first- through third-degree controlled substance *possession* offenses and the offense of possession of a small amount of marijuana.
- 2** **Small amount.** Amends the definition of "small amount," which relates to the offense of possession of a small amount of marijuana, so that the weight of bong water may not be

used to determine what constitutes a "small amount" when the bong water measures less than four fluid ounces.

- 3 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" that contains less than four fluid ounces of bong water.
- 4 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" that contains less than four fluid ounces of bong water.
- 5 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" that contains less than four fluid ounces of bong water.