

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 2138

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DATE
02/27/2023

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Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to public safety; providing the same weight threshold and penalty for
1.3 fentanyl as is for heroin; amending Minnesota Statutes 2022, sections 152.01, by
1.4 adding a subdivision; 152.021, subdivisions 1, 2; 152.022, subdivisions 1, 2;
1.5 152.023, subdivision 2; 152.025, subdivision 4.

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

1.7 Section 1. Minnesota Statutes 2022, section 152.01, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 25. **Fentanyl.** As used in sections 152.021 to 152.025, "fentanyl" includes fentanyl,
1.10 carfentanil, and any fentanyl analogs and fentanyl-related substances listed in section 152.02,
1.11 subdivisions 2 and 3.

1.12 Sec. 2. Minnesota Statutes 2022, section 152.021, subdivision 1, is amended to read:

1.13 Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the first
1.14 degree if:

1.15 (1) on one or more occasions within a 90-day period the person unlawfully sells one or
1.16 more mixtures of a total weight of 17 grams or more containing cocaine or methamphetamine;

1.17 (2) on one or more occasions within a 90-day period the person unlawfully sells one or
1.18 more mixtures of a total weight of ten grams or more containing cocaine or methamphetamine
1.19 and:

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

2.1 (ii) the offense involves two aggravating factors;

2.2 (3) on one or more occasions within a 90-day period the person unlawfully sells one or
2.3 more mixtures of a total weight of ten grams or more containing heroin or fentanyl;

2.4 (4) on one or more occasions within a 90-day period the person unlawfully sells one or
2.5 more mixtures of a total weight of 50 grams or more containing a narcotic drug other than
2.6 cocaine, heroin, fentanyl, or methamphetamine;

2.7 (5) on one or more occasions within a 90-day period the person unlawfully sells one or
2.8 more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine,
2.9 or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or
2.10 more dosage units; or

2.11 (6) on one or more occasions within a 90-day period the person unlawfully sells one or
2.12 more mixtures of a total weight of 25 kilograms or more containing marijuana or
2.13 Tetrahydrocannabinols.

2.14 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
2.15 committed on or after that date.

2.16 Sec. 3. Minnesota Statutes 2022, section 152.021, subdivision 2, is amended to read:

2.17 Subd. 2. **Possession crimes.** (a) A person is guilty of a controlled substance crime in
2.18 the first degree if:

2.19 (1) the person unlawfully possesses one or more mixtures of a total weight of 50 grams
2.20 or more containing cocaine or methamphetamine;

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

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

2.26 (ii) the offense involves two aggravating factors;

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

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

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

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

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

3.10 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
3.11 committed on or after that date.

3.12 Sec. 4. Minnesota Statutes 2022, section 152.022, subdivision 1, is amended to read:

3.13 Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the
3.14 second degree if:

3.15 (1) on one or more occasions within a 90-day period the person unlawfully sells one or
3.16 more mixtures of a total weight of ten grams or more containing a narcotic drug other than
3.17 heroin or fentanyl;

3.18 (2) on one or more occasions within a 90-day period the person unlawfully sells one or
3.19 more mixtures of a total weight of three grams or more containing cocaine or
3.20 methamphetamine and:

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

3.24 (ii) the offense involves three aggravating factors;

3.25 (3) on one or more occasions within a 90-day period the person unlawfully sells one or
3.26 more mixtures of a total weight of three grams or more containing heroin or fentanyl;

3.27 (4) on one or more occasions within a 90-day period the person unlawfully sells one or
3.28 more mixtures of a total weight of ten grams or more containing amphetamine, phencyclidine,
3.29 or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or
3.30 more dosage units;

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

4.4 (6) the person unlawfully sells any amount of a Schedule I or II narcotic drug to a person
4.5 under the age of 18, or conspires with or employs a person under the age of 18 to unlawfully
4.6 sell the substance; or

4.7 (7) the person unlawfully sells any of the following in a school zone, a park zone, a
4.8 public housing zone, or a drug treatment facility:

4.9 (i) any amount of a Schedule I or II narcotic drug, lysergic acid diethylamide (LSD),
4.10 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

4.11 (ii) one or more mixtures containing methamphetamine or amphetamine; or

4.12 (iii) one or more mixtures of a total weight of five kilograms or more containing marijuana
4.13 or Tetrahydrocannabinols.

4.14 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
4.15 committed on or after that date.

4.16 Sec. 5. Minnesota Statutes 2022, section 152.022, subdivision 2, is amended to read:

4.17 Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the
4.18 second degree if:

4.19 (1) the person unlawfully possesses one or more mixtures of a total weight of 25 grams
4.20 or more containing cocaine or methamphetamine;

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

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

4.26 (ii) the offense involves three aggravating factors;

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

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

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

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

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

5.10 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
5.11 committed on or after that date.

5.12 Sec. 6. Minnesota Statutes 2022, section 152.023, subdivision 2, is amended to read:

5.13 Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the
5.14 third degree if:

5.15 (1) on one or more occasions within a 90-day period the person unlawfully possesses
5.16 one or more mixtures of a total weight of ten grams or more containing a narcotic drug other
5.17 than heroin or fentanyl;

5.18 (2) on one or more occasions within a 90-day period the person unlawfully possesses
5.19 one or more mixtures of a total weight of three grams or more containing heroin or fentanyl;

5.20 (3) on one or more occasions within a 90-day period the person unlawfully possesses
5.21 one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals
5.22 50 or more dosage units;

5.23 (4) on one or more occasions within a 90-day period the person unlawfully possesses
5.24 any amount of a schedule I or II narcotic drug or five or more dosage units of lysergic acid
5.25 diethylamide (LSD), 3,4-methylenedioxy amphetamine, or
5.26 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing zone,
5.27 or a drug treatment facility;

5.28 (5) on one or more occasions within a 90-day period the person unlawfully possesses
5.29 one or more mixtures of a total weight of ten kilograms or more containing marijuana or
5.30 Tetrahydrocannabinols; or

6.1 (6) the person unlawfully possesses one or more mixtures containing methamphetamine
6.2 or amphetamine in a school zone, a park zone, a public housing zone, or a drug treatment
6.3 facility.

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

6.7 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
6.8 committed on or after that date.

6.9 Sec. 7. Minnesota Statutes 2022, section 152.025, subdivision 4, is amended to read:

6.10 Subd. 4. **Penalty.** (a) A person convicted under the provisions of subdivision 2, clause
6.11 (1), who has not been previously convicted of a violation of this chapter or a similar offense
6.12 in another jurisdiction, is guilty of a gross misdemeanor if: (1) the amount of the controlled
6.13 substance possessed, other than heroin or fentanyl, is less than 0.25 grams or one dosage
6.14 unit or less if the controlled substance was possessed in dosage units; or (2) the controlled
6.15 substance possessed is heroin or fentanyl and the amount possessed is less than 0.05 grams.

6.16 (b) A person convicted under the provisions of subdivision 1; subdivision 2, clause (1),
6.17 unless the conduct is described in paragraph (a); or subdivision 2, clause (2), may be
6.18 sentenced to imprisonment for not more than five years or to payment of a fine of not more
6.19 than \$10,000, or both.

6.20 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to crimes
6.21 committed on or after that date.