

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

S.F. No. 3664

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DATE
02/15/2024

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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; modifying fifth-degree controlled substance penalties;
1.3 amending Minnesota Statutes 2022, section 152.025, subdivision 4; Minnesota
1.4 Statutes 2023 Supplement, section 152.18, subdivision 1.

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

1.6 Section 1. Minnesota Statutes 2022, section 152.025, subdivision 4, is amended to read:

1.7 Subd. 4. **Penalty.** (a) A person convicted under the provisions of subdivision 2, clause
1.8 (1), who has not been previously convicted of a violation of this chapter or a similar offense
1.9 in another jurisdiction, is guilty of a gross misdemeanor if: ~~(1) the amount of the controlled~~
1.10 ~~substance possessed, other than heroin, is less than 0.25 grams or one dosage unit or less if~~
1.11 ~~the controlled substance was possessed in dosage units; or (2) the controlled substance~~
1.12 ~~possessed is heroin and the amount possessed is less than 0.05 grams.~~ A person convicted
1.13 under the provisions of subdivision 2, clause (1), whose only previous controlled substance
1.14 conviction is for a violation of subdivision 2, clause (1), or a violation of a similar offense
1.15 in another jurisdiction, is guilty of a gross misdemeanor.

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

2.1 Sec. 2. Minnesota Statutes 2023 Supplement, section 152.18, subdivision 1, is amended
2.2 to read:

2.3 Subdivision 1. **Deferring prosecution for certain first time drug offenders.** (a) A
2.4 court may defer prosecution as provided in paragraph (c) for any person found guilty, after
2.5 trial or upon a plea of guilty, of a violation of section 152.023, subdivision 2, 152.024,
2.6 subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d),
2.7 for possession of a controlled substance, who:

2.8 (1) has not previously participated in or completed a diversion program authorized under
2.9 section 401.065;

2.10 (2) has not previously been placed on probation without a judgment of guilty and
2.11 thereafter been discharged from probation under this section; and

2.12 (3) has not been convicted of a felony violation of this chapter, including a felony-level
2.13 attempt or conspiracy, or been convicted by the United States or another state of a similar
2.14 offense that would have been a felony under this chapter if committed in Minnesota, unless
2.15 ten years have elapsed since discharge from sentence.

2.16 (b) The court must defer prosecution as provided in paragraph (c) for any person found
2.17 guilty of a violation of section 152.025, subdivision 2, who:

2.18 (1) meets the criteria listed in paragraph (a), clauses (1) to (3); and

2.19 (2) has not previously been convicted of a felony offense under any state or federal law
2.20 ~~or of a gross misdemeanor under section 152.025.~~

2.21 (c) In granting relief under this section, the court shall, without entering a judgment of
2.22 guilty and with the consent of the person, defer further proceedings and place the person
2.23 on probation upon such reasonable conditions as it may require and for a period, not to
2.24 exceed the maximum sentence provided for the violation. The court may give the person
2.25 the opportunity to attend and participate in an appropriate program of education regarding
2.26 the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation
2.27 of a condition of the probation, the court may enter an adjudication of guilt and proceed as
2.28 otherwise provided. The court may, in its discretion, dismiss the proceedings against the
2.29 person and discharge the person from probation before the expiration of the maximum
2.30 period prescribed for the person's probation. If during the period of probation the person
2.31 does not violate any of the conditions of the probation, then upon expiration of the period
2.32 the court shall discharge the person and dismiss the proceedings against that person.
2.33 Discharge and dismissal under this subdivision shall be without court adjudication of guilt,

3.1 but a not public record of it shall be retained by the Bureau of Criminal Apprehension for
3.2 the purpose of use by the courts in determining the merits of subsequent proceedings against
3.3 the person. The not public record may also be opened only upon court order for purposes
3.4 of a criminal investigation, prosecution, or sentencing. Upon receipt of notice that the
3.5 proceedings were dismissed, the Bureau of Criminal Apprehension shall notify the arresting
3.6 or citing law enforcement agency and direct that agency to seal its records related to the
3.7 charge. Upon request by law enforcement, prosecution, or corrections authorities, the bureau
3.8 shall notify the requesting party of the existence of the not public record and the right to
3.9 seek a court order to open it pursuant to this section. The court shall forward a record of
3.10 any discharge and dismissal under this subdivision to the bureau which shall make and
3.11 maintain the not public record of it as provided under this subdivision. The discharge or
3.12 dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities
3.13 imposed by law upon conviction of a crime or for any other purpose.

3.14 For purposes of this subdivision, "not public" has the meaning given in section 13.02,
3.15 subdivision 8a.