



2023 South Dakota Legislature

House Bill 1067

Introduced by: **Representative Perry**

1 **An Act to provide for a rebuttable presumption of intent to distribute**
 2 **methamphetamine when in possession of more than five grams.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-42-4.3 be AMENDED:**

5 **22-42-4.3.** Except as authorized by this section or chapter 34-20B, no person may
 6 manufacture, distribute, or dispense more than five grams of methamphetamine, a
 7 methamphetamine analog or immediate precursor; possess with intent to manufacture,
 8 distribute, or dispense methamphetamine, a methamphetamine analog or immediate
 9 precursor; create or distribute a counterfeit of methamphetamine, a methamphetamine
 10 analog or immediate precursor; or possess with intent to distribute a counterfeit of
 11 methamphetamine, a methamphetamine analog or immediate precursor. Possession of
 12 more than five grams of methamphetamine, a methamphetamine analog or immediate
 13 precursor constitutes a rebuttable presumption of the intent to distribute or dispense the
 14 substance. A violation of this section is a Class 3 felony. However, a violation of this section
 15 is a Class 2 felony if the person is in possession of three or more of the following:

- 16 (1) Three hundred dollars or more in cash;
- 17 (2) A firearm, or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-
 18 15.3, and subdivision 22-1-2(8);
- 19 (3) Bulk materials used for the packaging of methamphetamine;
- 20 (4) Materials used to manufacture methamphetamine including recipes, precursor
 21 chemicals, laboratory equipment, lighting, ventilating or power generating
 22 equipment; or
- 23 (5) Drug transaction records or customer lists.

24 A first conviction under this section shall be punished by a mandatory sentence in
 25 the state penitentiary of at least one year, which sentence may not be suspended. A
 26 second or subsequent conviction under this section shall be punished by a mandatory

1 sentence in the state penitentiary of at least ten years, which sentence may not be
2 suspended.

3 The manufacture, distribution, or dispensing of methamphetamine, a
4 methamphetamine analog or immediate precursor to a minor is a Class 1 felony. A first
5 conviction for distribution to a minor under this section shall be punished by a mandatory
6 sentence in the state penitentiary of at least five years, which sentence may not be
7 suspended. A second or subsequent conviction for distribution to a minor under this
8 section shall be punished by a mandatory sentence in the state penitentiary of at least
9 fifteen years, which sentence may not be suspended.

10 Probation, suspended imposition of sentence, or suspended execution of sentence,
11 may not form the basis for reducing the mandatory time of incarceration required by this
12 section.

13 A civil penalty may be imposed, in addition to any criminal penalty, upon a
14 conviction of a violation of this section not to exceed ten thousand dollars. A conviction
15 for the purposes of the mandatory sentence provisions of this chapter is the acceptance
16 by a court of any plea, other than not guilty, including nolo contendere, or a finding of
17 guilt by a jury or court.