

HB 3447 Summary & Analysis

HB 3447 (Ammons), a/k/a “Reducing Barriers to Recovery,” reclassifies the penalty for possession of small amounts of drugs from a felony to a Class A misdemeanor, and offers diversion in the form of behavioral health assessments and access to treatment for people who need it. The bill also offers retroactive sentencing relief to tens of thousands of people negatively impacted by felony convictions for drug possession, and enables people with misdemeanor drug convictions to have their records expunged after 5 years.

1. Penalty Reclassification

Under current law, possession of any quantity of a controlled substance is classified as a felony. For most common street drugs, possession of any amount from residue up to 15 grams is a Class 4 felony (1-3 years IDOC or probation); Above the 15-gram threshold, the penalties escalate to a Class 1 felony (4-15 years IDOC or probation), with prison sentences up to 50 years for the highest amounts.

HB 3447 establishes new quantity thresholds, below which the penalty for possession of a controlled substance would be reduced to a Class A misdemeanor:

- Heroin: < 3 grams;
- Fentanyl: < 3 grams;
- Methamphetamine: < 3 grams;
- Cocaine: < 5 grams;
- Morphine: < 4 grams;
- Pentazocine: < 4 grams;
- “Ecstasy” (MDMA & related): < 2 grams or 5 pills;
- Oxycodone, hydrocodone & related: < 4 grams or 40 pills;
- LSD: < 1 gram or 40 tabs/objects;
- PCP: < 3 grams
- Ketamine: < 3 grams
- Other substances: Any amount

Sentencing options for a person found guilty of a Class A misdemeanor include: under 1 year incarceration in county jail; up to 2 years probation; conditional discharge; or court supervision.

The bill would also align the penalties for felony possession of smaller amounts of methamphetamine with those for similar quantities of heroin and fentanyl, by reducing the penalty for possession of 3-5 grams of methamphetamine from a Class 3 felony to a Class 4 felony, and 5-15 grams of methamphetamine from a Class 2 felony to a Class 4 felony.

The bill would eliminate possession with intent to deliver (PWID) charges for amounts under the new threshold. Currently, PWID carries the same penalty as manufacture or delivery of a controlled substance. The bill would not change the penalties for manufacture or delivery of any amount of a controlled substance.

Current law provides that any person convicted for a second or subsequent time of any drug violation may be sentenced to imprisonment for a term up to twice the maximum term otherwise authorized. The bill would limit this penalty enhancement to felony offenses only, and would exclude convictions

that occurred prior to the bill's effective date for offenses that are being reclassified to misdemeanors under HB 3447.

2. Diversion

HB 3447 creates a framework for a Misdemeanor Diversion Program. A court or prosecutor's office could establish the program at their discretion. People charged with misdemeanor drug possession or any other misdemeanor offense, other than a violent offense or a crime involving possession or use of a gun, would qualify for the program.

A defendant's participation in the program would be voluntary, and would be at the discretion of the entity that created the program (either the court or the State's Attorney). Courts and prosecutors would continue to have the flexibility to use other diversion options instead.

If the defendant agrees to comply with the terms of the diversion program, the criminal case would be suspended while they:

- a. Obtain an evaluation from a community-based human services provider to determine whether the person has substance use, mental health, or other social service needs; and
- b. If the evaluation indicates that the person has such needs, obtain a comprehensive assessment and service plan.

Compliance with the terms of the program would result in dismissal of the charges, and the person would be immediately eligible to petition the court to seal or expunge their record.

3. Retroactivity

HB 3447 provides that any person who is serving a sentence imposed before the bill's effective date for a drug possession offense reclassified as a misdemeanor under this bill could petition the court for a reduction of their sentence. IDOC would be responsible for identifying people currently in its custody for these offenses and notifying the appropriate prosecuting authority.

The bill enables any person who has previously completed a sentence for a felony that was reduced to a misdemeanor by this legislation to petition the court to enter an order designating their prior felony conviction as a misdemeanor.

4. Expungement

HB 3447 provides that records of misdemeanor drug possession convictions may be expunged 5 years after the person completes their sentence. A person who was convicted of a felony prior to the effective date, and whose conviction was reduced to a misdemeanor at a resentencing hearing, would be eligible for the same relief.

Expungement of these records would not be automatic; rather, the individual would be required to petition the court for expungement, and prosecutors would have standing to object.