

[Criminal Justice & Policing](#)

Fargo woman facing 30 years in prison for bong water

By: [Christopher Ingerham](#) - June 10, 2024 6:00 am



Bongs. Photo by Getty Images.

Last year the Legislature [decriminalized drug paraphernalia](#), even if it contains drug residue. The change represented a step back from the drug war tactics of previous decades, with an eye toward treating substance abuse as a public health problem, rather than a criminal justice concern.

But one obscure relic of the war on drug paraphernalia got overlooked, and was not included in the decriminalization bill: a provision in state law that treats bong water — the water at the bottom of a smoking device, used to cool and purify the intoxicating smoke — as a controlled substance, no different than the uncut version of whatever illicit drug the bong was used to smoke.

People don't consume bong water, but some prosecutors still use it as evidence to charge drug defendants with more serious crimes than they otherwise would be eligible for.

Just ask Jessica Beske.

On May 8, the 43-year-old Fargo resident was pulled over for speeding on Highway 59 in Polk County, Minnesota, according to charging documents. Deputies smelled marijuana and searched the car, where they allege they found a bong, a glass jar containing a "crystal substance," and some items of paraphernalia, including pipes.

The residue on the paraphernalia tested positive for methamphetamine, as did the water in the bong and the substance in the glass jar. Deputies further reported that the bong water weighed 8 ounces and, somewhat confusingly, that the crystal substance weighed 13.2 grams "in total with the packaging."

Beske says the "packaging" is the glass jar, and that the reason deputies included the jar in the weight is that there wasn't a measurable quantity of substance in it. She maintains she had no drugs on her, only paraphernalia containing residue. That's precisely the sort of offense that lawmakers decriminalized in the 2023 bill.

But the Polk County prosecutor has instead charged her with first-degree felony possession, which carries a penalty of up to 30 years in prison and a \$1,000,000 fine.

It's because of the bong water.

For charging purposes under state law, 8 ounces of bong water is considered the same as 8 ounces of pure methamphetamine. That's well over the 50-gram threshold necessary to trigger a first-degree felony offense.

"The legislative intent behind the weight-based thresholds is to approximate whether a person is an end user or a dealer," said Kurtis Hanna, a longtime Minnesota drug reform advocate. "The fact that some county prosecutors are subverting that clear intent and are charging end users as though they are wholesalers, ruining their lives in the process, is shameful."

Deputies also seized Beske's car and \$2,400 in cash and intend to permanently forfeit them [under a state law](#) that allows authorities to take vehicles used to transport controlled substances "intended for distribution or sale," and cash that represents "the proceeds of a controlled substance offense."

Beske says she won the cash at the casino that night, and when she was pulled over she had a tax form from the casino to prove it.

The charges are baffling to her. "It's against common sense," she said in an interview. "It's against everybody's common sense."

The war on paraphernalia

Bong water was written into law following a 2009 state Supreme Court case, [State vs. Peck](#), in which a divided court ruled that water in a pipe could be considered a "drug mixture" under the legal definition, and hence could count toward substance weights used to determine offense severity.

The justices relied, in part, on the testimony of a Minnesota State Patrol officer who claimed that drug users keep bong water "for future use... either drinking it or shooting it in the veins."

Three of the court's seven justices dissented. "Bong water is usually discarded when the smoker is finished with consumption of the smoke filtered through the bong water," they wrote. "A person is not more dangerous, or likely to wreak more havoc, based on the amount of bong water that person possesses."

The 2009 decision garnered [national headlines](#) and made the state the butt of [countless jokes](#). The following year, legislators passed a bill exempting bong water quantities of less than 4 ounces from the legal definition of "mixture." Despite unanimous support in the Senate and the votes of all but two House members, then-governor [Tim Pawlenty vetoed it](#).

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Pawlenty, who was by then [preparing for a presidential run](#), defended the veto on "[The Daily Show](#)" by saying he did it at the behest of law enforcement.

The bong water exception was reintroduced the following year. It was opposed by the Minnesota County Attorneys Association, with the group's [executive director testifying](#) that drug traffickers would mix methamphetamine into water, transport it, and then evaporate the water to sell the meth.

But the bill passed again and was signed into law by newly elected Gov. Mark Dayton. The 4-ounce standard remains on the books today. Kurtis Hanna says it's a purely arbitrary limit: "There doesn't seem to be any good reason why 4 ounces is ok, but 5 is not."

An uncommon offense

Bong water prosecutions don't appear to be common, but they do happen. In 2013, [a Waseca man spent seven months in prison](#) on a 6.5 year sentence for possessing half an ounce of bong water that tested positive for methamphetamine.

But he was released when attorneys discovered that neither his prosecutor, his defense lawyer nor the judge in the case realized that the bong water in question was well under the possession threshold.

Reached via phone, Robert Small, the current executive director of the Minnesota County Attorneys Association, asked somewhat incredulously if anyone was actually charging bong water cases in the state today. When informed of the Polk County case, he suggested contacting the county attorney there and said he couldn't offer any other relevant information.

Scott Buhler, the assistant county attorney prosecuting Beske's case, said "I will not comment on any pending cases. The criminal complaint filed in Ms. Beske's case speaks for itself." He added that his office "simply enforces the laws of this state as written."

A zealous prosecution

Buhler gained statewide attention in 2014 when the [Star Tribune reported](#) he was one of the few attorneys in the state charging people for violating an archaic law requiring them to pay taxes on illicit drugs.

“I simply charge it a lot because it leaves all options available regarding plea bargaining and sentencing,” he said at the time. Lawmakers tried, but ultimately failed, to [repeal that tax](#) during this legislative session.

That philosophy may explain why he’s throwing the book at Beske. In addition to first-degree possession, he charged her with a violation of the illicit drug tax law, which carries the potential for seven years in prison and a \$14,000 fine. She was also charged with refusing a drug test at the time of her arrest.

But that tough-on-crime mentality is increasingly out of step in a state where marijuana is legal and lawmakers on both sides of the political aisle have acknowledged that harsh criminal penalties don’t address addiction or underlying mental health issues.

Earlier this year a [drug policy report commissioned by the Legislature](#) concluded that “arresting people for drug use does not deter future use, crime recidivism, arrest, or incarceration,” and that “imprisonment does not impact rates of drug use or arrest.” It noted that people released from prison are at a heightened risk for drug overdose.

Beske acknowledges she has a substance abuse problem. She says it began while she was in the process of leaving an abusive ex.

“The only thing I’m guilty of is using substances to lessen my mental suffering caused by a sick and abusive predator,” she said. “Addicts — women especially — are made to feel like public enemy number one, when in fact most of us have been victims of serious crime that will never be prosecuted.”

The thought of 30 years in prison makes her despair. “It’s just gonna make my life worse and make me want to use drugs more,” she said. “That’s why people use drugs mostly, is to cope.”

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