

**DRUG SENTENCING REFORM PROPOSAL OF
THE MINNESOTA COUNTY ATTORNEYS ASSOCIATION,
THE MINNESOTA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
THE STATE PUBLIC DEFENDER, AND
THE U.S. JUSTICE ACTION NETWORK**

March 2016

1. CHANGES TO MANDATORY MINIMUM SENTENCES.

Eliminate mandatory minimum sentences based on prior 3rd, 4th, and 5th degree drug convictions. Prior 1st and 2nd degree convictions within 10 years would still trigger the mandatory minimum for a subsequent conviction of a 1st and 2nd degree drug crime of 48 months for a 1st degree conviction and 36 months for a 2nd degree conviction (which is the same as in current law).

2. CHANGES TO SENTENCING GUIDELINES.

Sentencing Guidelines changes go into effect, except 1st degree possession is moved up one sentencing level, placing 1st degree possession and 1st degree sale at the same sentencing level with a range of 56-78 months with zero criminal history.

[Note: Combining 1st degree controlled substance sale and possession crimes into the same level will result in the elimination of drug sentencing level D8 as proposed by the Sentencing Guidelines Commission. Consequently, the D9 level would become the D8 level under this sentencing grid (56-78 months with zero criminal history) and the D10 level would become the D9 level under this sentencing grid (74-103 months with zero criminal history). These changes are reflected herein. The proposed new drug sentencing grid is attached.]

3. CHANGES TO DRUG THRESHOLD AMOUNTS.

- 1st degree narcotic sale threshold is increased from 10 to 25 grams. Heroin threshold would remain at 10 grams.¹
- 1st degree narcotic possession threshold is increased from 25-50 grams. Heroin threshold would remain at 25 grams.²
- 1st degree marijuana crime thresholds are reduced from 50 to 25 kilograms for sale and from 100 to 50 kilograms for possession.³
- 2nd degree narcotics thresholds are increased from 3 to 10 grams for sale and from 6 to 25 grams for possession. Heroin thresholds would remain at 3 grams sale and 6 grams possession.⁴
- 2nd degree marijuana crime thresholds are reduced from 25 to 10 kilograms for sale and from 50 to 25 kilograms for possession.⁵
- 3rd degree controlled substance crime possession threshold is increased from 3 to 10 grams for all drugs other than heroin. Heroin threshold would remain at 3 grams.⁶

¹ This crime would be placed at sentencing grid level D8 (D9 as proposed by the Sentencing Guidelines Commission), i.e., a presumptive prison commit of 56-78 months with zero criminal history.

² See footnote 1.

³ See footnote 1.

⁴ This crime would be placed at sentencing grid level D7 as proposed by the Sentencing Guidelines Commission, i.e., a 36 month stayed prison sentence with zero criminal history.

⁵ See footnote 4.

⁶ This crime would be placed at sentencing grid level D6 as proposed by the Sentencing Guidelines Commission, i.e., a 21 month stayed prison sentence with zero criminal history.

4. CREATE NEW 1ST AND 2ND DEGREE MARIJUANA CRIMES.

Create a new 1st and 2nd degree controlled substance crime involving marijuana possession:

- 1st degree = 500 or more plants,
- 2nd degree = 100 or more plants.

5. CREATE AN AGGRAVATED FIRST DEGREE CONTROLLED SUBSTANCE CRIME.

Create a new aggravated 1st degree controlled substance crime which would be ranked under new drug sentencing level D9 (level D10 is proposed by the Sentencing Guidelines Commission) with a sentencing range of 74-103 months with zero criminal history.

Sale or possession of 100 grams or 500 dosage units alone would constitute an aggravated 1st degree controlled substance crime and conviction of such an offense would result in a hard mandatory minimum sentence of the presumptive fixed sentence in sentencing level D8 (level D9 as proposed by the Sentencing Guidelines Commission), i.e. 65 months with no criminal history; 75 months with one criminal history point; etc.

If the sale or possession of 100 grams or 500 dosage units occurs under circumstances where the first aggravating factor listed below is present (i.e., possession of a firearm or dangerous weapon), the hard mandatory minimum sentence upon conviction would become the presumptive fixed sentence under new sentencing guidelines level D9 (level D10 as proposed by the Sentencing Guidelines Commission) depending upon criminal history (i.e., 86 months if no criminal history; 98 months if 1 criminal history point; etc.).

If the sale or possession of 100 grams or 500 dosage units occurs under circumstances where two or more of the following aggravating factors are present, the hard mandatory minimum sentence upon conviction would become the presumptive fixed sentence under new sentencing guidelines level D9 (level D10 as proposed by the Sentencing Guidelines Commission) depending upon criminal history (i.e., 86 months if no criminal history; 98 months if 1 criminal history point; etc.).

Aggravating Factors:

- (1) the defendant, or an accomplice, knowingly possessed a firearm or other dangerous weapon, as defined in section 609.02, subdivision 6, during the commission of the offense;
- (2) Within the previous 10 years, the defendant has a prior conviction for a crime of violence, as defined in section 609.1095, subdivision 1, paragraph (d), other than a violation of a provision under this chapter, including an attempt or conspiracy, or was convicted of a similar offense by the United States or another state;
- (3) the offense was committed for the benefit of a criminal gang as described in section 609.229;
- (4) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;
- (5) the offense involved the transfer of controlled substances across a state or international border and into Minnesota;
- (6) the offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to sell or transfer;
- (7) the circumstances of the offense reveal the defendant to have occupied a high position in the drug distribution hierarchy;

(8) the defendant used a position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships;

(9) the offense involved the sale of a controlled substance to a minor or vulnerable adult;

(10) the defendant, or an accomplice, manufactured, possessed, or sold a controlled substance in a school zone, park zone, ~~public housing zone~~, federal, state, or local correctional facility, or drug treatment facility; ~~and or~~

(11) the defendant or an accomplice possessed equipment, drug paraphernalia, documents, or monies evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than the minimum threshold amount for the underlying offense.

6. REDUCE THE PENALTY FOR 5TH DEGREE CONTROLLED SUBSTANCE CRIMES INVOLVING POSSESSION OF A TRACE AMOUNT (GROSS MISDEMEANOR).

All first time 5th degree controlled substance crimes involving possession of a “trace amount” of controlled substances will be classified as a gross misdemeanor rather than a felony. A second or subsequent 5th degree controlled substance possession crime would be a felony. For purposes of this provision, “trace amount” will be defined as possession or sale of less than .25 grams of any controlled substance other than heroin; less than .1 gram for heroin; and 1 dosage unit or less of any controlled substance possessed or sold by dosage units rather than grams (e.g., LSD, Ecstasy, prescription pills, etc.).

7. STAYS OF ADJUDICATION BECOME MANDATORY (UNLESS A PRIOR FELONY CONVICTION).

A stay of adjudication under M.S. §152.18 shall be mandatory for all first time 5th degree controlled substance possession crimes, provided the defendant has not previously been convicted of a felony offense.

8. INCREASING PENALTY FOR THIRD OR SUBSEQUENT DRUG PARAPHERNALIA CRIMES.

Create a misdemeanor offense for a third or subsequent conviction of possession of drug paraphernalia.

9. COMMUNITY REINVESTMENT.

All involved in this effort to reform our drug sentencing laws (i.e., the Minnesota County Attorneys Association; the Minnesota Association of Criminal Defense Lawyers; the State Public Defender; and the U.S. Justice Action Network) agree to support the reinvestment of money saved from prison bed savings resulting from this proposal into community programs aimed at prevention and treatment of chemical addiction, including the funding of drug courts.

10. COMMITMENT TO SUPPORT THIS PROPOSAL.

All organizations involved in this effort to reform our drug sentencing laws (i.e., the Minnesota County Attorneys Association; the Minnesota Association of Criminal Defense Lawyers; the State Public Defender; and the U.S. Justice Action Network) agree to actively oppose any efforts to amend this proposal before the Minnesota Legislature.