

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 1232 - Mandatory Stay of Adjudication for Certain First-Time Drug Offenders

Author: Senator Don Betzold

Prepared by: Chris Turner, Senate Research (651/296-4350) *CT*

Date: March 17, 2005

Section 1 mandates a stay of adjudication for first-time offenders who violate:

- Minnesota Statutes, section 152.024, subdivision 2 [Controlled Substance Crime in the Fourth Degree] (Possession Crime – Felony);
- Minnesota Statutes, section 152.025, subdivision 2 [Controlled Substance Crime in the Fifth Degree] (Possession Crime – Felony);
- Minnesota Statutes, section 152.027 [Other Controlled Substance Offenses]:
 - Subdivision 2 [Possession of Schedule V Controlled Substance] (Gross misdemeanor);
 - Subdivision 3 [Possession of Marijuana in a Motor Vehicle] (Misdemeanor);
 - Subdivision 4 [Possession or Sale of a Small Amounts of Marijuana] (Petty Misdemeanor).

Offenders who have previously received a stay of adjudication are not eligible for the stay under the bill.

Current law allows the court to order a stay of adjudication. It does not mandate this.

CT:vs

Senators Betzold, Neuville and Dibble introduced--**S.F. No. 1232: Referred to the Committee on Crime Prevention and Public Safety.**

1 A bill for an act

2 relating to crimes; requiring mandatory diversion for

3 certain controlled substance offenses; amending

4 Minnesota Statutes 2004, section 152.18, subdivision 1.

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

6 Section 1. Minnesota Statutes 2004, section 152.18,

7 subdivision 1, is amended to read:

8 Subdivision 1. [DEFERRING PROSECUTION FOR CERTAIN FIRST

9 TIME DRUG OFFENDERS.] If any person who has not previously

10 participated in or completed a diversion program authorized

11 under section 401.065 or who has not previously been placed on

12 probation without a judgment of guilty and thereafter been

13 discharged from probation under this section is found guilty of

14 a violation of section 152.024, subdivision 2, 152.025,

15 subdivision 2, or 152.027, subdivision 2, 3, or 4, for

16 possession of a controlled substance, after trial or upon a plea

17 of guilty, and the court determines that the violation does not

18 qualify as a subsequent controlled substance conviction under

19 section 152.01, subdivision 16a, the court ~~may~~ shall, without

20 entering a judgment of guilty and with the consent of the

21 person, defer further proceedings and place the person on

22 probation upon such reasonable conditions as it may require and

23 for a period, not to exceed the maximum sentence provided for

24 the violation. The court may give the person the opportunity to

25 attend and participate in an appropriate program of education

1 regarding the nature and effects of alcohol and drug abuse as a
2 stipulation of probation. Upon violation of a condition of the
3 probation, the court may enter an adjudication of guilt and
4 proceed as otherwise provided. The court may, in its
5 discretion, dismiss the proceedings against the person and
6 discharge the person from probation before the expiration of the
7 maximum period prescribed for the person's probation. If during
8 the period of probation the person does not violate any of the
9 conditions of the probation, then upon expiration of the period
10 the court shall discharge the person and dismiss the proceedings
11 against that person. Discharge and dismissal under this
12 subdivision shall be without court adjudication of guilt, but a
13 not public record of it shall be retained by the Bureau of
14 Criminal Apprehension for the purpose of use by the courts in
15 determining the merits of subsequent proceedings against the
16 person. The not public record may also be opened only upon
17 court order for purposes of a criminal investigation,
18 prosecution, or sentencing. Upon request by law enforcement,
19 prosecution, or corrections authorities, the bureau shall notify
20 the requesting party of the existence of the not public record
21 and the right to seek a court order to open it pursuant to this
22 section. The court shall forward a record of any discharge and
23 dismissal under this subdivision to the bureau which shall make
24 and maintain the not public record of it as provided under this
25 subdivision. The discharge or dismissal shall not be deemed a
26 conviction for purposes of disqualifications or disabilities
27 imposed by law upon conviction of a crime or for any other
28 purpose.

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

31 Sec. 2. [EFFECTIVE DATE.] Section 1 applies to crimes
32 committed on or after August 1, 2005.

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S.F. No. 903 - Conditional Release for Certain Controlled Substance Offenders; Expungements Authorized

Author: Senator Thomas Neville

Prepared by: Chris Turner, Senate Research (651/296-4350) @ T

Date: March 17, 2005

Section 1 authorizes the Commissioner of Corrections to place certain drug offenders (defined in section 2) in a public or private correctional treatment facility (as defined in section 4).

Section 2, subdivision 1, creates a Conditional Release Board, having the authority to grant conditional early release to nonviolent drug offenders who have met the criteria outlined in subdivision 3.

Subdivision 2 provides board membership criteria. The board shall consist of the Commissioners of Corrections and Public Safety and three public members appointed by the Governor with the advice and consent of the Senate.

Subdivision 3 provides the following offender criteria for consideration for conditional early release:

- the crime of conviction must be a first- to fifth-degree controlled substance crime (Minnesota Statutes, sections 152.021 to 152.025);
- the sentencing court must determine at the time of sentencing that the offender committed the crime as a result of drug addiction and not primarily for profit;
- the offender has served at least 24 months or one-half of the offender's term of imprisonment; and
- the offender has successfully completed a chemical dependency treatment program while in prison.

Subdivision 4 requires the Commissioner of Corrections to offer chemical dependency treatment to the offenders described in subdivision 3 within 120 days after their term of imprisonment begins.

Subdivision 5 requires the board to make a determination that an offender does not pose a threat to public safety before it grants a conditional release. In making its determination, the board must follow the release procedures established in Minnesota Statutes, section 244.05, subdivision 2, and its applicable rules.

Subdivision 6 provides that the board may rescind a conditional release without hearing if it determines that continuation of the release poses a danger to the public or to an individual.

Subdivision 7 prohibits the conditional release of an offender serving concurrent sentences for an offense eligible for conditional release and an offense ineligible for release under this section until the offender has served the entire term of imprisonment for the ineligible offense.

Section 3 permits, five years after discharge from release or expiration of sentence, the filing of a petition for expungement of criminal records for offenders who are conditionally released under section 2, provided the petitioner has not been convicted of any new offense.

Section 4 requires the Commissioner of Corrections to issue a request for proposals from vendors, including private vendors, to construct and operate a secure correctional chemical dependency treatment facility. Proposals must:

- include comprehensive treatment plans for methamphetamine, as well as other controlled substance addictions;
- provide for the tracking of released offenders to document recidivism rates for at least four years after release; and
- provide the state with a first right to acquire the facility if the private vendor wishes to discontinue providing services to the Department of Corrections.

CT:vs

Senators Neuville, Betzold, Foley and Rosen introduced--
S.F. No. 903: Referred to the Committee on Crime Prevention and Public Safety.

1 A bill for an act

2 relating to public safety; creating a Conditional
3 Release Board with the authority to order the
4 conditional release from prison of certain nonviolent
5 controlled substance offenders, if the release of
6 these offenders does not pose a danger to the public
7 or any individual; authorizing expungements of
8 conviction records for these offenders; requiring the
9 Department of Corrections to offer chemical dependency
10 treatment to certain offenders; authorizing an RFP for
11 the construction and operation of correctional
12 facilities to house and treat controlled substance
13 offenders; amending Minnesota Statutes 2004, section
14 609A.02, by adding a subdivision; proposing coding for
15 new law in Minnesota Statutes, chapters 243; 244.

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

17 Section 1. [243.051] [PLACEMENT OF CERTAIN CONTROLLED
18 SUBSTANCE OFFENDERS.]

19 The commissioner of corrections may place an offender who
20 meets the criteria described in section 244.055, subdivision 3,
21 clauses (1) and (2), and who is committed to the commissioner's
22 custody at a correctional facility described in section 4. In
23 addition, if there is sufficient space available, the facility's
24 operator may rent beds to counties for the placement of
25 controlled substance offenders who are on probation.

26 Sec. 2. [244.055] [CONDITIONAL RELEASE OF NONVIOLENT
27 CONTROLLED SUBSTANCE OFFENDERS; OPPORTUNITY FOR DRUG TREATMENT.]

28 Subdivision 1. [CONDITIONAL RELEASE BOARD.] The
29 Conditional Release Board has the authority to release offenders
30 committed to the custody of the commissioner of corrections who

1 meet the requirements of this section and of any rules adopted
2 by the board.

3 Subd. 2. [MEMBERSHIP.] (a) The board consists of the
4 following five members:

- 5 (1) the commissioner of corrections or a designee;
6 (2) the commissioner of public safety or a designee; and
7 (3) three public members appointed by the governor with the
8 advice and consent of the senate.

9 (b) Members of the board appointed by the governor under
10 paragraph (a), clause (3), are not required to have specific
11 academic or professional qualifications but must have knowledge
12 of or experience in corrections or related fields and must be
13 selected based on their sound judgment and ability to consider
14 the needs of persons over whom the board has jurisdiction and
15 the safety of the public. At least one of the public members
16 must be male, at least one must be female, and at least one must
17 be a member of a racial minority group.

18 (c) Members of the board shall serve for a term of six
19 years and are eligible for reappointment.

20 (d) The removal of members appointed by the governor under
21 paragraph (a), clause (3), and the filling of their vacant
22 positions is governed by section 15.0575.

23 Subd. 3. [CONDITIONAL RELEASE OF CERTAIN NONVIOLENT
24 CONTROLLED SUBSTANCE OFFENDERS.] An offender who has been
25 committed to the commissioner's custody may petition the board
26 for conditional release from prison before the offender's
27 scheduled supervised release date or target release date if:

- 28 (1) the offender is serving a sentence for violating
29 section 152.021, 152.022, 152.023, 152.024, or 152.025;
30 (2) the sentencing court determined at the time of
31 sentencing that the offender committed the crime as a result of
32 a controlled substance addiction, and not primarily for profit;
33 (3) the offender has served at least 24 months or one-half
34 of the offender's term of imprisonment, whichever is less; and
35 (4) the offender successfully completed a chemical
36 dependency treatment program while in prison.

1 Subd. 4. [OFFER OF CHEMICAL DEPENDENCY TREATMENT.] The
2 commissioner shall offer all offenders meeting the criteria
3 described in subdivision 3, clauses (1) and (2), the opportunity
4 to begin a suitable chemical dependency treatment program within
5 120 days after the offender's term of imprisonment begins.

6 Subd. 5. [RELEASE PROCEDURES.] The board may not grant
7 conditional release to an offender under this section unless the
8 board determines that the offender's release will not pose a
9 danger to the public or an individual. In making its
10 determination, the board shall follow the procedures contained
11 in section 244.05, subdivision 5, and the rules adopted by the
12 commissioner of corrections under that subdivision. The board
13 shall also consider the offender's custody classification and
14 level of risk of violence and the availability of appropriate
15 community supervision for the offender. Conditional release
16 granted under this section continues until the offender's
17 sentence expires, unless release is rescinded under subdivision
18 6.

19 Subd. 6. [CONDITIONAL RELEASE.] The conditions of release
20 granted under this section are governed by the statutes and
21 rules governing supervised release under this chapter, except
22 that release may be rescinded without hearing by the Conditional
23 Release Board if the board determines that continuation of the
24 conditional release poses a danger to the public or to an
25 individual. If the board rescinds an offender's conditional
26 release, the offender shall be returned to prison and shall
27 serve the remaining portion of the offender's sentence.

28 Subd. 7. [OFFENDERS SERVING OTHER SENTENCES.] An offender
29 who is serving both a sentence for an offense described in
30 subdivision 3 and an offense not described in subdivision 3, is
31 not eligible for release under this section unless the offender
32 has completed the offender's full term of imprisonment for the
33 other offense.

34 [EFFECTIVE DATE.] This section is effective January 1,
35 2006, and applies to offenders serving terms of imprisonment and
36 to offenders sentenced on or after that date.

1 Sec. 3. Minnesota Statutes 2004, section 609A.02, is
2 amended by adding a subdivision to read:

3 Subd. 1a. [OTHER CONTROLLED SUBSTANCE OFFENSES;
4 CONVICTIONS.] A petition may be filed under section 609A.03 to
5 seal all records relating to an arrest, indictment or
6 information, trial, or verdict for a violation of section
7 152.022, 152.023, 152.024, or 152.025 if the actions or
8 proceedings were not resolved in favor of the petitioner, and if:

9 (1) the petitioner was conditionally released under section
10 244.055;

11 (2) at least five years have elapsed since the petitioner
12 has been discharged from conditional release or since the
13 petitioner's sentence has expired; and

14 (3) the petitioner has not been convicted of any new
15 offense.

16 [EFFECTIVE DATE.] This section is effective August 1, 2005.

17 Sec. 4. [RFP TO CONSTRUCT AND OPERATE CORRECTIONAL
18 FACILITIES FOR CONTROLLED SUBSTANCE OFFENDERS.]

19 (a) The commissioner of corrections shall issue a request
20 for proposals from vendors, including private vendors, to
21 construct and operate a secure correctional facility to house
22 controlled substance offenders committed to the commissioner's
23 custody. The request must solicit proposals for a facility or
24 facilities for up to 1,000 offenders. At least one facility
25 must be for female offenders. At least one facility must
26 include a faith-based treatment program.

27 (b) Proposals must:

28 (1) include a plan for the operation of comprehensive,
29 long-term chemical dependency treatment programs within the
30 facility for methamphetamine as well as other controlled
31 substances;

32 (2) provide for the tracking of released offenders to
33 document recidivism rates for a minimum of four years after
34 release; and

35 (3) provide the state of Minnesota with a first right to
36 acquire the facility if the private vendor wishes to discontinue

- 1 providing services to the Department of Corrections.
- 2 [EFFECTIVE DATE.] This section is effective the day
- 3 following final enactment.

- 1 Senator moves to amend S.F. No. 903 as follows:
- 2 Page 1, delete section 1
- 3 Page 2, line 33, delete "24" and insert "36"
- 4 Page 2, line 34, delete "and"
- 5 Page 2, line 36, before the period, insert "; and
- 6 (5) the offender has not previously been conditionally
- 7 released under this section"
- 8 Pages 4 and 5, delete section 4
- 9 Renumber the sections in sequence and correct the internal
- 10 references
- 11 Amend the title accordingly

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Senate

State of Minnesota

S.F. No. 1138 - Controlled Substance Offenders

Author: Senator Julianne E. Ortman

Prepared by: Kenneth P. Backhus, Senate Counsel (651/296-4396)

Date: March 16, 2005

KB

Section 1 provides that the presumptive sentence for a first-time fourth- or fifth-degree controlled substance possession offender is a stayed sentence. Authorizes a court to stay the sentence for a first-time first-, second-, or third-degree controlled substance possession offender. If a court stays the sentence under this section, it must order the offender to successfully complete a described chemical dependency treatment program. Sentences under this section are not departures under the sentencing guidelines. Authorizes courts to require an offender sentenced under this section to pay the costs of treatment. Requires a court to consider the results of the presentence investigation before sentencing an offender under this section. Exempts from the section offenders who have previously committed a violent crime or who possessed a dangerous weapon at the time of the offense.

Section 2 requires the Commissioner of Corrections to place offenders convicted of second- through fifth-degree controlled substance crimes (both sales and possession) on supervised release when the offender reaches the halfway point of the offender's executed sentence, if the original length of the offender's sentence was 18 months or longer and the offender successfully completed a chemical dependency treatment program of at least six months in duration while in prison. Under current law, offenders must serve at least two-thirds of their executed sentence in prison before being placed on conditional release.

Sections 3 to 5 amend Minnesota Statutes, chapter 609A (Expungements).

Section 3 authorizes offenders who received a stayed sentence under **section 1** to petition for an expungement if:

- the offender successfully completed and fully paid for a chemical dependency treatment program under **section 1** and has not violated any other terms or conditions imposed by the sentencing court;

- at least one year has elapsed since the offender completed the treatment program and during that time the offender has not illegally used or possessed a controlled substance or violated any law; and
- the offender has fully paid all of the prosecution and other costs imposed by the sentencing court.

Allows a court to order an indigent offender to perform an amount of community service having a monetary value of up to 50 percent of the costs of the chemical dependency treatment program and the prosecution and other costs described above to help the offender qualify for the expungement.

Section 4 requires that an expungement for an offender described in **section 3** must be granted if the offender establishes by a preponderance of the evidence that:

- the offender meets the criteria described in **section 3**; and
- the granting of the expungement would grant a benefit to the offender commensurate with the disadvantages to the public and public safety of sealing the record and burdening the court and public authorities to issue, enforce, and monitor the expungement order.

Section 5 provides that if a court grants an expungement under **sections 3 and 4**, it shall discharge the offender from probation for the underlying offense.

Section 6 provides that offenders who meet the criteria described in **section 2**, but who completed a chemical dependency treatment program before that section's effective date, shall be placed on supervised release.

Section 7 appropriates \$1 million for each year of the fiscal biennium to: the Commissioner of Corrections for prison-based chemical dependency treatment programs; the Commissioner of Human Services for Tier II chemical dependency treatment of persons with low incomes; and the POST Board for reimbursements for peace officer training.

KPB:vs

1 designated by the court. The court shall select a program that
2 is appropriate given the offender's chemical dependency needs.
3 When possible, the program must be tailored specifically to the
4 offender's specific addiction, have an inpatient and outpatient
5 component, including aftercare, and be of a sufficient duration
6 to adequately address the offender's chemical dependency issues.

7 (c) A sentence under this subdivision is not a departure
8 under the sentencing guidelines.

9 Subd. 2. [STAYED SENTENCES AUTHORIZED; FIRST-TIME FIRST-,
10 SECOND-, AND THIRD-DEGREE CONTROLLED SUBSTANCE POSSESSORS.] (a)
11 Notwithstanding any contrary provision of the sentencing
12 guidelines or any other law, the court may stay the execution of
13 sentence for an offender convicted of violating section 152.021,
14 subdivision 2; 152.022, subdivision 2; or 152.023, subdivision
15 2, if the offender has not previously been convicted or
16 adjudicated delinquent for a violation of this chapter, or an
17 offense from another jurisdiction similar to an offense under
18 this chapter. The court may impose appropriate terms and
19 conditions on the offender.

20 (b) If the court stays an offender's sentence under
21 paragraph (a), it shall order the offender to successfully
22 complete a chemical dependency treatment program designated by
23 the court. The court shall select a program that is appropriate
24 given the offender's chemical dependency needs. When possible,
25 the program must be tailored specifically to the offender's
26 specific addiction, have an inpatient and outpatient component,
27 including aftercare, and be of a sufficient duration to
28 adequately address the offender's chemical dependency issues.

29 (c) A sentence under this subdivision is not a departure
30 under the sentencing guidelines.

31 Subd. 3. [COSTS.] When a court sentences an offender under
32 this section, it may require the offender to pay the costs of
33 the treatment program as well as other costs authorized by law.

34 Subd. 4. [PRESENTENCE INVESTIGATION.] The court shall
35 consider the results of the presentence investigation under
36 section 609.115, including the chemical use assessment, and any

1 other relevant information before sentencing an offender
2 described in this section.

3 Subd. 5. [EXCEPTION; PRIOR VIOLENT CRIMES OR POSSESSION OF
4 DANGEROUS WEAPON.] Except as otherwise provided in this section,
5 this section does not apply to an offender who has previously
6 been convicted or adjudicated delinquent for a violent crime as
7 defined in section 609.1095 or who possessed a dangerous weapon
8 at the time of arrest.

9 [EFFECTIVE DATE.] This section is effective August 1, 2005,
10 and applies to offenders sentenced on or after that date.

11 Sec. 2. [244.045] [SUPERVISED RELEASE OF CONTROLLED
12 SUBSTANCE OFFENDERS.]

13 (a) Notwithstanding any contrary provision of the
14 sentencing guidelines or any other law, but subject to paragraph
15 (c), the commissioner of corrections shall place an offender
16 committed to the commissioner's custody for a violation of
17 section 152.022, 152.023, 152.024, or 152.025 on supervised
18 release after the offender has served one-half of the offender's
19 executed sentence if:

20 (1) the original length of the offender's executed sentence
21 was 18 months or longer; and

22 (2) while in prison for the offense, the offender
23 successfully completed a chemical dependency treatment program
24 of at least six months in duration.

25 (b) Successful completion of the program described in
26 paragraph (a), clause (2), is to be determined by the program
27 director.

28 (c) No offender who violates a disciplinary rule or refuses
29 to participate in a rehabilitative program as required under
30 section 244.03 shall be placed on supervised release until the
31 offender has served the disciplinary confinement period for that
32 disciplinary sanction or until the offender is discharged or
33 released from punitive segregation confinement, whichever is
34 later. The imposition of a disciplinary confinement period
35 shall be considered to be a disciplinary sanction imposed upon
36 an offender, and the procedure for imposing the disciplinary

1 to the subject of the record.

2 [EFFECTIVE DATE.] This section is effective August 1, 2005.

3 Sec. 5. Minnesota Statutes 2004, section 609A.03, is
4 amended by adding a subdivision to read:

5 Subd. 6a. [CERTAIN CONTROLLED SUBSTANCE OFFENDERS;
6 DISCHARGE FROM PROBATION.] If the court orders the sealing of
7 the criminal record of a petitioner under subdivision 5,
8 paragraph (c), it shall discharge the petitioner from probation
9 for the offense.

10 [EFFECTIVE DATE.] This section is effective August 1, 2005.

11 Sec. 6. [CONTROLLED SUBSTANCE OFFENDERS CURRENTLY IN
12 PRISON; SUPERVISED RELEASE.]

13 An offender meeting the criteria described in Minnesota
14 Statutes, section 244.045, who completed a chemical dependency
15 treatment program before August 1, 2005, while in prison for
16 that offense, shall be placed on supervised release by the
17 commissioner of corrections within a reasonable time after
18 presenting the program director's certification to the
19 commissioner showing that the offender successfully completed
20 the program.

21 [EFFECTIVE DATE.] This section is effective the day
22 following final enactment.

23 Sec. 7. [APPROPRIATIONS.]

24 Subdivision 1. [CORRECTIONS.] \$1,000,000 for the fiscal
25 year ending June 30, 2006, and \$1,000,000 for the fiscal year
26 ending June 30, 2007, are appropriated from the general fund to
27 the commissioner of corrections for the development, expansion,
28 and operation of prison-based chemical dependency treatment
29 programs, including, but not limited to, methamphetamine
30 treatment programs.

31 Subd. 2. [HUMAN SERVICES.] \$1,000,000 for the fiscal year
32 ending June 30, 2006, and \$1,000,000 for the fiscal year ending
33 June 30, 2007, are appropriated from the general fund to the
34 commissioner of human services for deposit into the chemical
35 dependency treatment fund for Tier II chemical dependency
36 treatment of persons with low incomes.

1 Subd. 3. [PEACE OFFICERS STANDARDS AND TRAINING
2 BOARD.] \$1,000,000 for the fiscal year ending June 30, 2006, and
3 \$1,000,000 for the fiscal year ending June 30, 2007, are
4 appropriated from the general fund to the Peace Officers
5 Standards and Training Board for reimbursements for peace
6 officer training.

1 Senator moves to amend S.F. No. 1138 as follows:

2 Page 3, line 2, after the period, insert "The court may
3 sentence the offender under this section only if the sentence is
4 appropriate based on the results of the assessment."

5 Page 3, line 21, delete "and"

6 Page 3, line 24, before the period, insert "; and

7 (3) the chemical dependency treatment provider determined
8 that the offender committed the crime as a result of a
9 controlled substance addiction"

10 Page 3, lines 26 and 27, delete "program director" and
11 insert "chemical dependency treatment provider"

12 Page 4, line 33, delete "of up to 50" and insert "from 25
13 to 100"

14 Page 5, line 24, delete "shall" and insert "may"

T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

Adopted:
September 17, 2004

**Minnesota County Attorneys Association
Policy Positions on Drug Control and Enforcement**

Introduction

The manufacture, distribution and use of illegal drugs are some of the most overwhelming problems facing our state and nation. The number of crimes that directly and indirectly involve the illegal drug trade is enormous. Minnesota County Attorneys routinely witness the harmful effects of drug abuse and illegal drug trafficking on our society in terms of violence, crime, and physical and mental illness. These harmful effects in turn result in significant costs to our health care, social service and criminal justice systems.

Minnesota County Attorneys recognize that the causes of drug abuse are many and that those who unlawfully traffic drugs are constantly creating new methods of manufacturing and distribution. The multiple causes of drug abuse and the ever-evolving nature of illegal drug trafficking make this an extremely difficult problem to address. It is therefore important that those involved in all branches of government continue to explore new methods and procedures to address the state's drug problem. The Minnesota County Attorneys Association (hereafter "Association" or "Minnesota County Attorneys") supports efforts to review current legislation and explore new methods and procedures to address illegal drug trafficking and drug abuse.

The Association is committed to working with the Governor, Legislature, state departments, criminal justice agencies, private organizations, and the community in exploring new approaches to combat the illegal drug problem. In doing so, the Association believes it is important that any new legislation, policies, or programming proceed cautiously to avoid weakening our state's response to criminal behavior or adversely impacting the interests of pursuing justice. Paramount to any proposal is the need to protect public safety and to recognize that those who knowingly possess, use, promote, manufacture or distribute illegal drugs are personally responsible for their actions and should be held accountable for their criminal behavior.

Policy Positions Adopted by the Minnesota County Attorneys Association

I. Prosecution and Sentencing.

1. The first priority of any state legislation or policy should be protection of the public.

The manufacture, distribution, possession, and use of illegal drugs are not victimless crimes. The 2002 "National Drug Control Strategy" published by the White House estimated that the societal cost associated with drug abuse is \$160 billion per year.¹ The harmful effects of these illegal acts often impact the most vulnerable of our society. A December 2003 report published by the Hazelden Foundation revealed that 57 children were exposed to operational methamphetamine labs in Minnesota in 2002, with most living under the same roof as the methamphetamine manufacturer. Two of the children died.²

There is ample evidence to demonstrate a significant link between illegal drug activity and numerous other crimes. In 2000, the Arrestee Drug Abuse Monitoring (ADAM) Program of the National Institute of Justice, which tests arrestees in 35 major metropolitan areas, found that between 52 and 80 percent of arrested adult males tested positive for illegal drugs.³ Also, it is common for those involved in the manufacture and distribution of illegal drugs to be involved in gang-related activities and to use firearms and other dangerous weapons to promote, expand and protect their criminal operations. In 2003, Minnesota Drug Task Forces reported that their investigations resulted in the seizure of approximately 700 firearms.⁴

Minnesota currently sentences drug offenders to prison at a lower rate than most other states. In 2000, 24% of drug offenders were sentenced to prison in Minnesota, compared to an average of 38% of drug offenders sentenced to prison in other states.⁵

Minnesota County Attorneys believe that state legislation and policy must appropriately acknowledge the dangerous and violent nature of illegal drug activity. More specifically, the Association supports state legislation and policy that provides for lengthy prison sentences with mandatory minimum terms of imprisonment for those who use firearms or engage in violent behavior to promote, expand, or protect their illegal drug operations.

¹ National Drug Control Strategy, The White House, February 2002, p.9.

² Drug Abuse Trends, Hazelden Foundation and the Butler Center for Research, December 2003, p.1.

³ Urinalysis tests conducted at the 35 ADAM sites found that 64.2% (median average with a range of 52.2 % to 79.9%) of adult males arrested had recently used at least one of five drugs (marijuana, cocaine, opiates, methamphetamine, or PCP). See 2000 Arrestee Drug Abuse Monitoring Program (ADAM) Report, National Justice Institute, Appendix Table 1-1.

⁴ Report of Minnesota Drug Task Force Activity Results (1999-2003), Minnesota Department of Public Safety, Office of Justice Programs.

⁵ Minnesota Sentencing Guidelines Commission Report to the Legislature, January 15, 2004, Table 3, pg. 16; and Bureau of Justice Statistic Report, "State Court Sentencing to Convicted Felons, 2000."

2. State legislation and policy must recognize the need to severely punish repeat or entrepreneurial drug dealers.

Minnesota County Attorneys believe a basic tenet of criminal law is that people are responsible for their own actions. When a person engages in criminal activity that has a repeated or widespread negative impact on a community, it is appropriate for that offender to be subject to a sanction that acknowledges the effect of the illegal activity on the community. The manufacture and distribution of drugs are unlawful enterprises whose operations result in widespread and long term negative impacts on society.

Minnesota County Attorneys believe lengthy sentences for repeat and entrepreneurial drug dealers are important and necessary. Such sanctions significantly disrupt unlawful operations and have a deterrent effect by increasing the potential “costs” of doing business for the drug dealer. Therefore, the Association supports state legislation and policy that provides for lengthy and mandatory minimum sentences for repeat and entrepreneurial drug dealers. State legislation and policy should allow for long sentences for offenders whose incarceration will either have a deterrent effect or where incapacitation is required to prevent a high likelihood of return to the drug trade.

3. Sentences for convicted drug offenders should take into account the impact potential sentences have on the importation of drug dealers to Minnesota and the balance between the state and federal prosecution systems.

Minnesota County Attorneys recognize that any effective approach to combating unlawful drug activity must address the reality that drug networks often spread beyond state borders and that state and federal agencies may have concurrent jurisdiction over a particular case. As a result, state law enforcement and prosecutors must work closely with their federal counterparts to assure that enforcement of drug laws is consistent and takes into consideration the cross-jurisdictional nature of drug trafficking.

The Association believes that state legislation and policy that results in significant reductions in potential sanctions for illegal drug activity will create unjustifiable sentencing disparities between the state and federal criminal justice systems for similar illegal activity. Significant sentencing disparities between the state and federal criminal justice systems may result in an increase in referrals to federal agencies. In addition, significant reductions in state sentences will reduce the potential “cost of business” for drug dealers in Minnesota as compared to other states and thereby encourage illegal drug operations within our state.

4. The unlawful possession of illegal drugs in any quantity should be a crime with appropriate penalties.

Minnesota County Attorneys believe that those who unlawfully possess or use small amounts of controlled substances, including marijuana, negatively impact themselves, their families, and the overall quality of life enjoyed by citizens of a community. Marijuana remains the

most common illegal drug used by adult males arrested for crimes in America.⁶ Use of marijuana, and the culture in which it occurs, often leads to experimentation with other and even more dangerous illegal drugs. Furthermore, those who unlawfully possess smaller amounts of drugs for personal use act as “customers” and support those who manufacture and distribute illegal drugs. The potential imposition of a criminal sanction allows law enforcement agencies to identify and monitor those who unlawfully use or possess illegal substances in their community, provides a useful tool to encourage those who abuse controlled substances to seek treatment, and acknowledges the widespread impact that illegal possession and use of drugs in any amount have upon a community.

Possessing a “small amount” (42.5 grams/1-1/2 oz. or less) of marijuana involves much more than someone smoking a single “joint”. A “small amount” of marijuana, as defined under Minnesota law, can cost as much as \$300-\$600 depending upon its potency.⁷ Persons with this quantity and value of drugs are significant contributors to the illegal drug market. Possession and use of marijuana, which today is far more potent than it was in the 1970’s, poses a much bigger problem than most realize – out of 16 million drug users in America, 77% use marijuana and 60% of teenagers in treatment have marijuana abuse as their primary diagnosis.⁸ Marijuana is also a gateway drug for many – almost 99% of persons using other illegal drugs began by smoking “a little weed”.⁹ Possession and use of small amounts of cocaine, heroin, methamphetamine or other controlled substances pose even greater dangers.

Consequently, the Association supports state legislation and policy that impose appropriate criminal sanctions for those who use and possess small amounts of controlled substances, including marijuana. The term “sanction” is not limited to incarceration. The use of electronic home monitoring, community service programs, fines, imposition of investigative and prosecution costs, and asset forfeiture should also be considered as sanctions. Labeling the possession of small amounts of marijuana as a petty misdemeanor (which is not even considered a crime), as Minnesota law currently does, simply sends the wrong message. Possession of a small amount of marijuana should be a misdemeanor offense. Possession of small amounts of any other controlled substance, irrespective of the weight, should remain a felony under Minnesota law.

5. Local units of government, prosecutors, defense counsel and judges should work together to develop creative options for dealing with drug offenders.

Minnesota County Attorneys recognize that while illegal drug activity is a statewide problem, the type, degree, and effect of illegal drug activity will often vary in local jurisdictions. Minnesota County Attorneys further recognize that the ability of local units of government to dedicate law enforcement, prosecution, court and other resources to combat illegal drug activity will also vary. Therefore, the Association believes it is necessary for

⁶ 2000 Arrestee Drug Abuse Monitoring Program (ADAM) Report, National Justice Institute, Executive Summary, p.1.

⁷ ¼ oz. of marijuana today sells for \$50-\$100 depending upon its potency. See Drug Abuse Trends, Hazelden Foundation and the Butler Center for Research, December 2003, p.4

⁸ An Open Letter to America’s Prosecutors, Executive Office of the President, Office of National Drug Control Policy, November 1, 2002, p. 1.

⁹ Id., p. 3.

local units of government and interested agencies to work together to develop creative options for dealing with drug offenders.

The Association supports the formation and funding of multi-jurisdictional drug task forces to investigate and apprehend drug offenders. Minnesota County Attorneys also support the establishment of diversion programs and drug courts for appropriate offenders (not including those involved in the manufacture and distribution of controlled substances or those who use guns or engage in violent behavior to promote, expand or protect their illegal drug operations), provided these programs are adequately funded, include necessary treatment for the offender, regularly monitor an offender's progress, and adequately address public safety concerns.

II. Treatment, Community Awareness and Prevention.

1. Whenever possible and appropriate, treatment and rehabilitation of drug offenders should be promoted.

Minnesota County Attorneys believe that the definition of success in any drug conviction is the offender's reintegration into society and avoidance of relapse of drug use. The Association believes that treatment plays an important role in the successful reintegration of a drug offender into society. The Association supports state legislation and policy that require all convicted drug offenders to be evaluated for drug dependency and mandate treatment as a condition of any sentence. The Association also supports legislation and policy that would prevent release of drug offenders from prison or probation without a chemical dependency evaluation of the offender and successful completion of a drug treatment program. Conditions of release from probation or prison should also be reasonably related to an offender's circumstances and enforced with an effort to gain compliance, not recommitment.

To encourage participation in treatment, the Association supports legislation and policy that would allow appropriate offenders to earn "good time" credit or early release by participating in and completing treatment and related programming. Any funds saved in the reduction of drug sentences through programs allowing early release from prison upon completing treatment should be utilized for additional treatment and re-entry programs. Minnesota County Attorneys also support state legislation and policy that would utilize existing state hospital space to create a minimum-security prison for non-violent drug offenders that includes and emphasizes treatment components.

2. The state should study the efficacy of varying types and lengths of treatment for different types of drugs and different levels of addiction, so that money available for treatment can be spent wisely.

Minnesota County Attorneys believe there is no one single treatment model that will successfully address every offender's drug use or addiction problems. Often a drug offender's mental and physical health concerns, poor economic condition, or lack of family

and peer support complicate successful treatment programming. Also, the type of drug being used may require a different type of treatment program. For example, the effects of methamphetamine can last up to six months for just one use and the drug can do greater damage to a person's physical, behavioral and thinking functions than many other illicit drugs or alcohol. For this reason, it takes much longer to treat a person with a meth addiction than it does to treat someone with a cocaine or heroin problem.¹⁰

Currently there are a variety of treatment models: public and private, custodial and non-custodial, spiritual and secular, in-patient and out-patient, voluntary and court ordered, individual and group, and cognitive and behavioral. Prosecutors, defense attorneys, judges and correctional staff must have access to a variety of treatment options to effectively address the needs of convicted drug offenders.

The Association supports state legislation and policy that study and identify the most effective treatment strategies and options for drug offenders. For example, the state should study the role of the mental health system in responding to drug addiction to determine whether certain drug offenders, as an alternative to incarceration or in addition thereto, should be civilly committed as inebriates.

3. State legislation and policy should encourage collaborative efforts between government agencies and community members that improve the quality of life and increase community awareness of the dangers of illegal drug activity.

Programs that improve the quality of life in a community and increase awareness of the dangers of drugs have demonstrated effectiveness in reducing drug use and should be promoted and adequately funded. The Association supports collaborative efforts such as Neighborhood Watch, "Weed and Seed", and other programs that bring government agencies and community members together to improve the overall quality of life and increase community awareness as to the dangers of drug abuse.

4. State legislation and policy should provide for regulation of precursors commonly used in the manufacture of methamphetamine.

The unlawful manufacture, distribution, and use of methamphetamine are quickly reaching epidemic levels in Minnesota. Since 1999, Minnesota Drug Task Forces have reported an increase of 178% in the amount of methamphetamine seized as a result of their investigations.¹¹ Much of the methamphetamine that was seized was manufactured within Minnesota. In 2003, Minnesota Drug Task Forces reported the seizure of over 400 methamphetamine labs, up dramatically from the 144 labs seized in 2000.¹² In addition to supporting illegal methamphetamine trafficking, such labs jeopardize the environment and pose substantial health and safety risks to children and other residents of the homes where these labs are located and to the surrounding community. While many of the precursors used in the manufacture of methamphetamine are obtained by methamphetamine manufacturers

¹⁰ Journal of Substance Abuse Treatment, April 2003, Vol. 24, No. 3.

¹¹ Report of Minnesota Drug Task Force Activity Results (1999-2003), Minnesota Department of Public Safety, Office of Justice Programs.

¹² Id.

illegally or under false pretenses, others are often obtained through legal purchases from unknowing legitimate sources. The Association supports state legislation and policy that place appropriate restrictions on precursors commonly used in the manufacture of methamphetamine.

III. Drug Enforcement Funding.

Cost Shifts Must Be Avoided.

The unlawful manufacture, distribution, and use of controlled substances are statewide problems. Illegal drug activity and its negative impact have no boundaries. Local governments are already required to dedicate a significant portion of financial and other resources to the investigation, prosecution, incarceration, and treatment of drug offenders. In addition, social service agencies of counties are often required to provide services to families and others affected by drugs. Funding and the ability of local units of government to dedicate resources to appropriately address the drug problem are limited and vary from jurisdiction to jurisdiction. Minnesota County Attorneys believe that costs associated with combating, treating, monitoring and incarcerating drug offenders should be primarily borne by the state and not local units of government. Therefore, any state legislative and policy changes in state drug laws should include a fiscal study that takes into account the direct and indirect financial impacts such changes would have upon local governments.

Case Statement - Proposed Drug Offender Legislation

To slow rapid expansion of drug inmates in state prisons and accelerating cost
To focus imprisonment on dangerous drug offenders
To avoid risk to community safety
To restore integrity to drug offender sentencing

Drug offenders disproportionately consume prison capacity. The size of the drug offender population behind bars is approaching one out of four inmates (21%) and consuming capacity equal to Stillwater Prison plus a third of Oak Park Heights. Moreover, the numbers are fast growing having increased by 11% in the past six months. Remedial options are to build more prisons, jam more into existing space or identify ways to retard growth while avoiding more crime - certainly the most desirable alternative and the goal of this legislation.

The increasing numbers of imprisoned drug offenders is having little effect on drug activity in the communities. Since 1989 the size of the imprisoned drug population has grown by a whopping 1,250%. The reason for locking up drug offenders is to reduce the number of offenders from the streets, and dissuade others from committing drug crimes through example. Nevertheless, increase in arrests for drug crime has been unabated, growing more than three fold since 1989. By now, the hoped for suppression effect on drug crime through imprisonment should be seen and prison growth level off. It has not.

Imprisoning the drug offender demonstrates no impact on subsequent crime. Recent research finds that recidivism by Minnesota drug offenders is not affected by imprisonment. *In other words, the community gains no discernable reduction in drug crime through imprisonment.*

In 1994 379 offenders were "presumed" to be given a prison sentence based on their crime and criminal record. Because of downward departures, 128 got the prescribed prison sentence, 93 got prison but for less time, and 158 got probation. The results as of January 1, 2003 are:

Those who went to prison (by now, all have been released)
38% were convicted of a subsequent felony.
The average number of new felonies was 1.8

~ 3 yr.

— from 1-03

Those who received probation
34% were convicted of a subsequent felony.
The average number of new felonies was 1.73

— from 1-03

Contrary to expectation, offenders sent to prison and out of circulation for months, were convicted of about the same number of new felonies after they were released as those who were initially placed on probation. Yet, the criminal history scores and severity levels were similar for both groups, that is, both their crimes and criminal records were the same.

Minnesota has some of the toughest penalties for drug offenses. Of 15 states surveyed across the country, Minnesota ranks near the top. For example, the amount cocaine in possession to reach the highest level of penalty is 10,000 grams in Alabama, 1000 grams in Pennsylvania and Ohio and only 10 grams in Minnesota. Respectively, the presumed penalty is AL - 12 to 120 months; PA - 60 to 78 months; OH - 120 months; MN - 86 months.

The integrity of sentencing drug offenders has been lost through wide inconsistencies. The intent of sentencing guidelines was to link crime seriousness and offender's crime record to punishment severity. Yet, most drug offenders for whom guidelines presume imprisonment (67% in 2001) receive downward "departures" with less time in prison or probation. Apparently judges (usually supported by prosecutors) find the prescribed penalties excessive. However, downward departures vary widely by jurisdiction gutting consistency and integrity.

The State's penal code can be altered to be more affordable, effective and evenhanded. The goal of revising current penal policy is to stabilize the inmate population of drug offenders, to imprison the more serious offender by raising the thresholds that determine imprisonment and length of confinement and bring drug penalties in line with proportionality of other offenses.

The proposed legislation:

- Reduces prison use for drug offenders by several hundred beds (the fiscal note will be exact)
- Retains current tough penalties for high level drug offenders
- Reduces severity for lesser offenders, thereby curbing judge's motivation to depart from guidelines and restores sentencing integrity.
- Shifts few offenders from state prisons to county jails.

The Cost Effectiveness of Substance Abuse Treatment Vs. Incarceration for Drug Offenders
By Gail Carlson
11/18/03

Substance abuse, which includes drug and alcohol dependency and addiction, and the misuse of prescription drugs, affects people from all races, ages and incomes. The costs to society from drug use include increased crime, increased health and social welfare expenditures and reduced productivity. The economic costs of alcohol and drug abuse each year in the US were estimated to be \$294 billion in 1997, according to the Center for Substance Abuse Treatment (CSAT).¹ According to the National Institute of Drug Abuse (NIDA), drug addiction treatment is cost-effective in reducing drug use and produces savings in health and social costs. Treatment is a lower cost solution than its alternatives; incarceration or not treating addicts.²

- The average cost per year of methadone maintenance treatment for heroin addicts is \$4,700, whereas one year of imprisonment costs \$18,400 per person.
- Every \$1 invested in drug addiction treatment programs produces \$3 to \$7 in reduced drug-related crime, criminal justice costs and theft. When health care savings are included, every dollar invested in treatment can produce \$12 of savings.
- A 1994 study by the Rand Corporation found that each additional dollar invested in treatment for cocaine addiction resulted in \$7.46 worth of savings in societal cost due to diminished crime and increased productivity. Treatment was rated as 14 times more effective as incarceration in reducing the costs of drug abuse.³
- Cost-savings earned by substance abuse treatment was nearly \$1.7 billion in 1994; according to the Center for Substance Abuse Treatment.⁴
- A 1996 Oregon study of drug and alcohol treatment found that for every tax dollar spent on treatment, \$5.60 was saved by the taxpayers.⁵

Several studies have demonstrated the effectiveness of substance abuse treatment. According to the 1996 National Treatment Improvement Evaluation Study (NTIES) substance abuse treatment⁶:

- Clients served by federally funded substance abuse treatment programs reduced their drug use by about 50 percent for as long as a year after leaving treatment.
- Criminal behavior following treatment fell by 50 to 80 percent from one year prior to treatment to one year after treatment (includes selling drugs, shoplifting, arrest rates, and supporting themselves through illegal activity).

¹“National Estimates of Expenditures for Substance Abuse Treatment, 1997 CSAT.”

² NIDA, “Is Drug Addiction Treatment Worth its Cost?” Drug Addition Treatment Frequently Asked Questions.

³ California Campaign for New Drug Policies, “Effectiveness of Drug Treatment”; November 2000.

⁴ Center for Substance Abuse Treatment (CSAT), National Evaluation Data Services, “CSAT by FAX”.

⁵ Office of Alcohol and Drug Abuse Programs, Oregon Department of Human Resources, “Societal Outcomes and Cost Savings of Drug and Alcohol Treatment in the State of Oregon.” 1996

⁶ Congressionally mandated 5-year study of the impact of drug and alcohol treatment programs funded by HHS, SAMSHA, and CSAT.

- Clients became more self sufficient. More clients found jobs, fewer collected welfare and fewer reported being homeless one year after treatment. Nineteen percent more clients received income from jobs and 11 percent fewer clients received welfare benefits within a year of completing treatment. The Oregon study found a significant reduction in food stamp use and 65 percent higher wages in treatment completers than treatment dropouts.⁷
- One year after treatment, clients enjoyed better physical and mental health. Alcohol /drug related medical visits declined by over 50 percent after treatment and inpatient mental health visits decreased by 28 percent.
- Substance abuse treatment reduces sexually risky behavior; which is a major avenue for the transmission of HIV/AIDS and other sexually transmitted diseases.

Substance abuse treatment has been found to be effective in reducing drug use and criminal activity. NIDA described some important elements in treatment effectiveness as:⁸

- Treatment needs to be readily available and customized to meet the multiple needs of the individual, not just drug use.
- Treatment was most effective when it lasted a period of three months or more.⁹
- Counseling and monitoring of the treatment plan is essential to success.

The US is faced with a surge in the prison population, with over 6.3 million or 3 percent adults of the nation's adult population under correctional supervision in 1999 (incarceration, probation or parole)¹⁰ Drug offenders accounted for 21 percent of the State prison population in 1998, 59 percent of the Federal prison population and 26 percent under local supervision.¹¹ The average cost to incarcerate an inmate per year in the U.S. was \$20,674 in 1997.¹² According to a study by the Rand Drug Policy Research Center, mandatory prison sentences were not as cost effective at reducing cocaine consumption, cocaine expenditures or drug-related crimes as putting drug offenders through treatment programs.¹³ Under Proposition 36 in California, offenders convicted of a nonviolent drug possession offense were sentenced to probation and would be required to complete a drug treatment program, rather than a state prison or county jail without treatment.¹⁴ According to the UCLA's first evaluation of Proposition 36, more people were affected by the law and California saved \$275 million in taxpayer money during its first year of enactment.¹⁵ With prevalent state and federal budget deficits, the cost savings of treatment over incarceration will play an important role in formulating drug policy.

⁷ Oregon Department of Human Resources.

⁸ Riley et al "Drug Offenders and the Criminal Justice System: Will Proposition 36 Treat or Create Problems?"

⁹ NIDA, "Drug Abuse Treatment Outcome Study" (DATOS) 1997.

¹⁰ Office of National Drug Control Policy (ONDCP) Fact Sheet, "Drug Treatment in the Criminal Justice System," 2001.

¹¹ ONDCP Fact Sheet 2001.

¹² ONDCP Fact Sheet 2001

¹³ Rand Drug Policy Research Center, "Mandatory Minimum Drug Sentences: Throwing away the Key or the Taxpayers Money?"

¹⁴ Riley et al.

¹⁵ Drug Policy Alliance, California Capital Office, "California Proposition 36, the Substance Abuse and Crime Prevention Act of 2000."



State of Minnesota
Minnesota Department of Corrections

February 20, 2004

The Honorable Tom Neuville
Minnesota State Senate
123 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155-1279

Dear Senator Neuville:

Pursuant to your letter of February 2, 2004, I can provide you with the following information.

TRIAD is a 293 bed treatment program encompassing short-term (90 day), medium term (4 to 6 months) and long term programming (10 to 12 months). TRIAD also offers a dual diagnosis program for inmates with mental health and chemical dependency issues, and a 30 bed program for aftercare. In addition, TRIAD has an institutional aftercare program (funded through federal RSAT funds and housed in a separate living unit at MCF-Lino Lakes) that includes approximately 65 inmates who have completed primary chemical dependency treatment within the DOC. Finally, there are some 45 to 50 inmates participating in continuing chemical dependency programming while in minimum custody.

The program takes primarily a cognitive-behavioral approach, while retaining elements of traditional AA and NA approaches and a therapeutic community. TRIAD offers a continuum of services from primary programming to institutional aftercare to support programming for inmates participating in minimum custody incentive programming (work release). I have attached a more thorough description for your information.

Number of inmates admitted and status at discharge:

TRIAD averages around 700 to 750 admissions per year to primary treatment programming. For example in 2003:

T-500 (short-term)	337
T-200 (medium term)	204
T-400 (long-term)	108
T-300 (Dual Diagnosis)	58
Total	707

There were an additional 100 inmates involved in the TRIAD Aftercare program.

Minnesota Prison Population Demographics

January 1, 1990

Population Total 3,114
 Males 2,965
 Females 149

Offenses (Top Six)

Sex Offenses 587 (19.3%)
 Homicide 478 (15.7%)
 Burglary 460 (15.1%)
 Robbery 364 (12.0%)
 Assault 322 (10.6%)
 Drugs 219 (7.2%)

Types of Offenses

Person 1794 (58.8%)
 Property 896 (29.4%)
 Drug Offense 219 (7.2%)
 Other/Not Reported 136 (4.5%)

January 1, 2000

Population Total = 5,927
 Males 5,581
 Females 346

Requested Offense Breakdown

Burglary
 Residential = 198
 Non Residential = 279
 Unknown = 42

Theft
 Theft = 113
 Theft-related* = 81

Vehicle Theft = 128
 Criminal Damage = 32

Drugs
 Sale = 286
 Possession = 537
 Unknown = 80

January 1, 2003

Population Total = 7,073
 Males 6,623
 Females 450

Requested Offense Breakdown

Burglary
 Residential = 261
 Non Residential = 234
 Unknown = 61

Theft
 Theft = 119
 Theft-Related* = 93

Vehicle Theft = 151
 Criminal Damage = 35

Drugs
 Sale = 440
 Possession = 827
 Unknown = 102
 Mfg = 114

*Theft-related includes Swindle, Theft by Check, Wrongfully Obtaining Assistance, Financial Card Fraud, Shoplifting, etc.

Minnesota Sentencing Guidelines Commission

Property and Drug Offenders Sentenced and Probation Revocations in 1993 and 2002

Minnesota Sentencing Guidelines Commission (MSGC) monitoring data are offender based, meaning cases represent offenders rather than individual charges. Offenders sentenced within the same county in a one-month period are generally counted only once, based on their most serious offense. Offense categories are based on the most serious offense.00

Drug and Property Offenders Sentenced in 1993 and 2002 Imprisonment Rate and Average Pronounced Sentence) By Offense Type

The Term of Imprisonment is 2/3 of the total Pronounced Sentence

Offense	1993			2002		
	# Offenders	Imprisonment Rate	Av. Pronounced Sentence	# Offenders	Imprisonment Rate	Av. Pronounced Sentence
Theft and Theft Related ¹	2,329	301 13%	21 months	1,678	260 16%	21 months
Motor Vehicle Theft or Use	428	98 23%	20 months	571	150 26%	21 months
Criminal Damage Prop.	176	14 8%	17 months	319	21 7%	16 months
Non-Residential Burglary	734	179 24%	29 months	501	121 24%	26 months
Other Property ² Offenses	729	112 15%	19 months	1,465	231 16%	19 months
Drug Possession ³	1,043	153 15%	35 months	2,402	512 21%	40 months
Drug Sale Offenses ⁴	807	186 23%	48 months	813	305 38%	59 months

1. Theft and Theft Related includes all offenses in Theft statute-609.52 (Except Theft of a Motor Vehicle and Motor Vehicle Use Without Consent); Welfare, Food Stamp, and Unemployment Compensation Fraud; and Receiving Stolen Property
2. Other Property Offenses include Forgery, Check Forgery, Dishonored Checks, Financial Transaction Card Fraud, Identity Theft, and other kinds of fraud offenses
3. Drug Possession include drug possession offenses at all controlled substance degrees
4. Drug Sale Offenses include drug sales at all controlled substance degrees (Manufacture of Methamphetamine is not included)

**Drug and Property Offenders: Probation Revocations in 1993 and 2002
of Probation Revocations and Average Time to Serve in Prison After Revocation
By Offense Type**

Offense	1993			2002		
	# Offenders Revoked	% of Total Revocations	Av. Time to Serve	# Offenders Revoked	% of Total Revocations	Av. Time to Serve
Theft and Theft Related ¹	99	16%	7 months	143	12%	7 months
Motor Vehicle Theft or Use	35	6%	6 months	72	6%	6 months
Criminal Damage Prop.	10	2%	7 months	29	2%	6 months
Non-Residential Burglary	59	10%	8 months	49	4%	7 months
Other Property ² Offenses	40	7%	7 months	91	7%	6 months
Drug Possession ³	64	11%	9 months	262	21%	7 months
Drug Sale Offenses ⁴	29	5%	13 months	66	5%	14 months
Other Offenses	266	44%	13 months	523	42%	13 months
Total Number of Revocations	602	100%	10 months	1,235	100%	10 months

1. Theft and Theft Related includes all offenses in Theft statute 609.52 (except Theft of a Motor Vehicle and Motor Vehicle Use Without Consent); Welfare, Food Stamp, and Unemployment Compensation Fraud; and Receiving Stolen Property
2. Other Property Offenses include Forgery, Check Forgery, Dishonored Checks, Financial Transaction Card Fraud, Identity Theft, and other kinds of fraud offenses
3. Drug Possession include drug possession offenses at all controlled substance degrees
4. Drug Sale Offenses include drug sales at all controlled substance degrees (Manufacture of Methamphetamine is not included)

AROUND THE NATION

States eye drug treatment instead of prison

BY ERIN MADIGAN
 Stataline.org

State budgets are starved for cash and many state prisons are stuffed to capacity, causing policymakers to hunt for money-saving alternatives to incarceration.

Several states have taken note of policy actions in Arizona and California and are considering sending non-violent drug offenders to substance abuse programs rather than prison.

In Kansas, a drug treatment diversion bill recently won legislative approval, and the issue is on the radar in Wisconsin, Washington, Arkansas, Hawaii, Maryland, Mississippi, Missouri, Oklahoma, South Carolina and New Mexico.

If signed by Gov. Kathleen Sebelius (D), the Kansas bill would require some nonviolent offenders to undergo drug treatment for up to 18 months instead of prison. It would go into effect Nov. 1, 2003. The legislation would free up 194 prison beds by the end of 2004. Currently, each prisoner costs the state about \$20,000 per year to feed, clothe and house, whereas drug treatment programs would cost between \$3,200 and \$6,400 per year, said Barb Tombs, executive director of the Kansas Sentencing Commission. Prison capacity in Kansas is 9,000, but the state estimates it will have 9,044 prisoners by the end of 2003.

"(The bill) isn't soft on crime. We just think it's good policy," Tombs said.

In other state activity:

- Wisconsin Gov. Jim Doyle (D) wants to transfer 400 nonviolent offenders into drug treatment programs for up to 90 days, said Bill Clausius, spokesman for the Wisconsin Department of Corrections. The proposal is one of many correction reforms outlined in the governor's 2003-2005 budget. "The ideas have been around,

but some of the (budget) pressure on state agencies has produced the evolution of these ideas. It isn't so much the partisanship as it is the fiscal situation," Clausius said.

- In Washington, Gov. Gary Locke (D) wants to implement a year early a law approved in 2002 that would shorten drug sentences and end post-release supervision of low-risk offenders. Washington state Rep. Al O'Brien (D-Mountlake Terrace) said the state may also divert "hundreds" of prisoners to drug treatment programs in July 2003 because of the state's budget crisis. O'Brien sponsored a diversion bill this session that died in committee.

- In Hawaii, former Gov. Benjamin Cayetano (D) signed a diversion bill in 2002 mandating that first-time offenders convicted of drug use or possession be sentenced to treatment with probation, not prison.

- New Mexico passed several sentencing reforms and expanded drug treatment programs in 2001 and 2002, but a bill sponsored by state Sen. Manny Aragon (D-Albuquerque) failed recently in the Senate. It will most likely be reintroduced next year.

The country's inmate population, including prisons and jails, jumped from 1.4 million in 1990 to 2.1 million in June 2002, exceeding the 2 million mark for the first time, according to the U.S. Bureau of Justice Statistics. Twenty-one percent of state inmates and 63 percent of federal inmates are considered nonviolent drug offenders.

Overcrowding and budget woes have made lawmakers "more willing to consider alternatives to prison," said Marc Mauer, assistant director of The Sentencing Project, a D.C.-based nonprofit that advocates sentencing reform.

Both supporters and opponents of diversion programs agree rehabilitation helps stop recidivism and the "revolving door" at jails and state penitentiaries.

But the cost of implementing such programs in the

short term can undercut the benefits, critics said. Opponents worry softer sentences could jeopardize community safety.

"(Drug treatment programs) can be cost-effective in the long run, but in the short term they're an investment. So if states are just looking to save money, this might not be as cost-effective as just opening up the prison doors," Mauer said, pointing out that beginning late last year, Kentucky and Michigan have released hundreds of prisoners before their terms ended. "I wouldn't consider (drug treatment) a low-budget item. When you match it up against incarceration it may save a bit, but it also puts drug offenders in a riskier position on the street," said Nola Foulston, a district attorney in Wichita, Kan., former prosecutor and board member of the National District Attorneys Association (NDAA).

The idea of treating nonviolent drug offenders instead of jailing them is not new. But the struggle by most states to balance their budgets is forcing policy makers to accelerate what might previously have been back-burner policies.

Legislative focus on sentencing reforms is coming full circle in part because of budget woes, Mauer said.

"There's a recognition that we've reached a record high prison population ... But I wouldn't say the punitive era is over," Mauer said.

Voters in Arizona and California approved sweeping ballot measures requiring drug treatment with probation instead of jail for low-level offenders. Their programs have served as models for other states.

And in New York, opponents of the state's 1973 Rockefeller laws hope the budget crisis will spark a long-awaited rollback of some of the harshest mandatory drug sentencing laws in the country. Gov. George Pataki (R) and the state legislature have voiced support for changing the often-called "draconian" laws, but no action has been taken, Mauer said.

Southern States: Kentucky A-G benefits by not being close to outgoing governor.

12/31/03

Does tough on crime always mean prison?

BY JACK RICE
Guest Columnist

He looks scared. I can tell by the way he stands before this judge, his knees shaking, his breathing uneven. The way he keeps rubbing his hands together. Even in the way he continually looks back into the audience for a friendly face as he wipes tears from his eyes. Short-cropped blond hair, blue eyes. I'd give him maybe 20, 21 at most. I'll call him Billy.

He is standing in a Minnesota courtroom, preparing to be sentenced for the manufacturing of methamphetamine. And I'm just another attorney waiting to represent my client on a similar charge once this guy gets sentenced and shipped off to some prison. And I shake my head. I keep seeing kids like Billy and wonder when these guys will stop. Or when we as Minnesotans will run out of money building prisons? Or if maybe there is a better way?

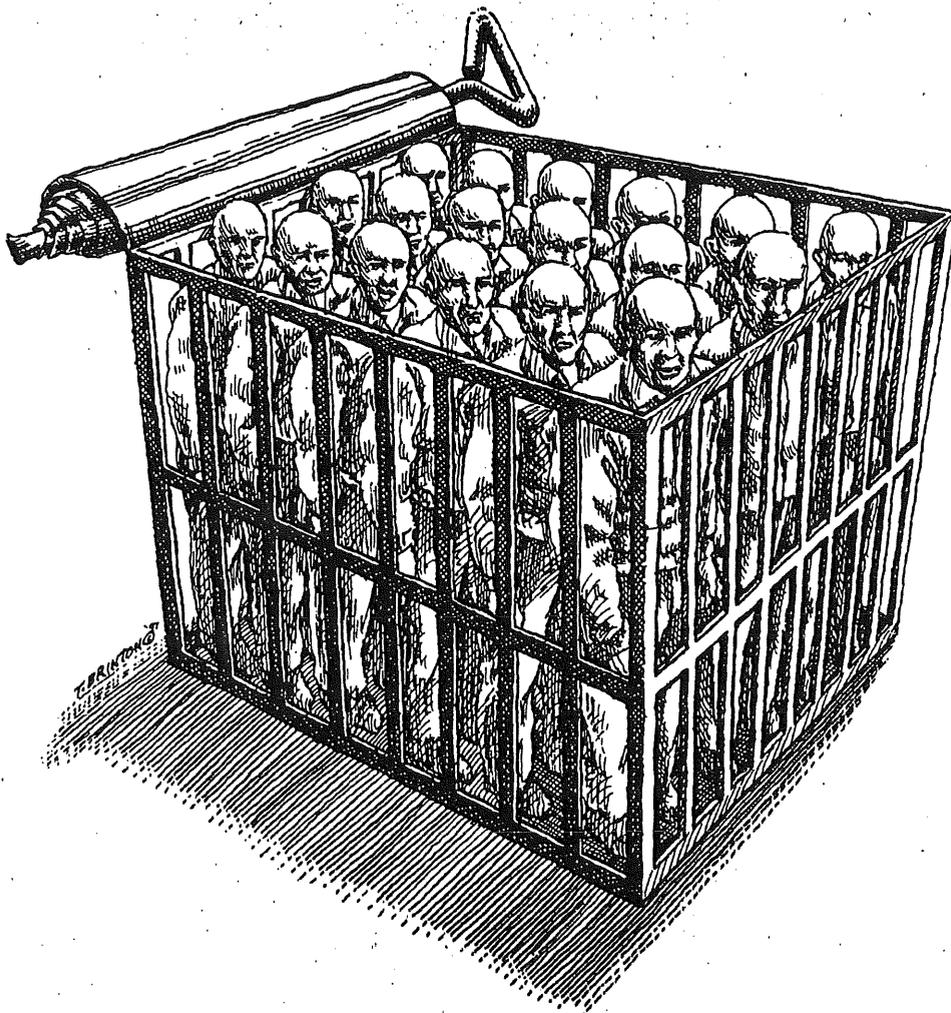
According to the Minnesota Sentencing Guidelines commission, judges sentenced 12,978 felons last year. That is 20 percent more than the previous year — apparently a growth industry! And while many don't go to prison, more and more of them do. Specifically, in just five years, the number of felons put in prison for meth charges, like Billy, increased from 64 in 1997 to more than 450 by 2002.

I guess this is part of the tough-on-drugs policy. And I understand it. I do! The way this stuff has poisoned our kids and robbed so many people of their futures, we must do something. But is putting these people in jail the only way? The best way? The most effective way?

I know that "appearing" tough on crime is something politicians are good at. It plays well with the constituents at home and makes a good sound bite for the media. Treatment to actually stop these addicts from coming back is another game all together and isn't as popular. But after watching so many of these guys get sent up the river because their addictions drive them to stupidity as well as desperation makes me wonder.

So I sit and I listen to the story of Billy and how things apparently went so terribly wrong.

Billy looks at the judge and explains how he stole Sudafed tablets and gave them to a guy in exchange for meth to support his habit. Now I get it! Billy is an addict and like so many addicts, he steals to pay for drugs. Unfortunately for this kid, this little bartering system results in his being charged and convicted of manufacturing of meth. You see, Billy's helping the other guy get the Sudafed, an ingredient used to make meth is enough to turn Billy into a manufacturer of drugs. That's how the law is written! Because my inter-



TIM BRINTON, NEWS ART

some hardened criminal, you ask? Hardly! In fact, as I listen, I learn that he has no prior convictions and never made this poison himself. In fact, it appears that he isn't smart enough to make it.

This doesn't surprise me. I've seen lots of cases like this.

According to the Department of Corrections, Minnesota will be housing more than 10,000 inmates by 2011. Amazingly, we only housed 2,255 as recently as 1985. So, as one might imagine, with the quadrupling of our jail population, the \$100 million or so the state will need to house these guys in the next couple of years isn't much of a shock. I just wonder how long we are going to look at nonviolent drug cases and just assume that we should spend millions of dollars locking people up rather than thinking of other alternatives, like treatment. We have so many other needs across our great state. Education. Roads. Child care.

I look at the judge. He, sitting at the bench looking stern in his black robes, looks down on Billy. I can't help but watch

isn't going to be pretty. Again, I think of the statistics.

According to experts, it costs about \$55 a day to house a criminal, a little more than the Motel 6, and we also have to pay to "leave the light on." In case anybody is counting, that is more than \$20,000 a year, per person. Now, if we want to provide some treatment for somebody like Billy, it will cost even more. It's hard not to be depressed when you think about it.

Finally, the judge rules. And he cuts Billy a break.

The judge agrees to a downward departure. According to the guidelines, Billy should go to prison for the next 86 months. Instead, the judge seems to understand and only sentences Billy to . . . 72 months. That's right, six years. At \$20,000 a year.

I hope the investment pays off. I have my doubts.

Billy cries and is led away.

Rice is a former CIA special agent, a former prosecutor, a criminal defense attorney and writer who can be heard on The Jack Rice

Dual Diagnosis

There are 20 beds for Dual Diagnosis programming. Inmates in this program have mental illness and chemical dependency issues. There is no time limit, however 6 months is the usual length of stay. The group is designed to be a supportive environment for individuals with dual diagnosis to work on their issues.

Referrals to the Dual Diagnosis or Special Needs program are made to Colette Morse at (651) 717-6526 or Randy Tenge at (651)717-6173.

Aftercare

There are currently 90 beds for chemical dependency aftercare programming. Eligible candidates will have completed a primary chemical dependency program during their incarceration and will be placed directly into the aftercare program. Aftercare programming allows the offender to work an institution job and participate in aftercare programming covering a variety of topics relevant to release, reintegration and recovery. Referrals will need to be coordinated between DOC programs.

Incentive Programs

Work release, Minimum, and ICWC eligibility will be considered in placement. The inmate does not need approval, but will need to be a likely candidate. The offenders eligible for incentive programs will need to be transferred to MCF Lino Lakes to be considered for placement in TRIAD. Case managers are asked to identify likely candidates for incentive programs so the case managers at MCF Lino Lakes will easily identify and refer those candidates to TRIAD.

General Transfer Priority for CD programming

Note: Transfers to MCF Lino Lakes for chemical dependency treatment are to be coordinated through the institution transfer coordinator. TRIAD will interview offenders once they arrive at MCF Lino Lakes.

1. Offenders likely eligible for incentive programs with CD directive. The offender should be transferred to MCF Lino Lakes with enough time to complete programming and participate in the incentive program.
2. Offenders who have not completed their CD directive and are likely not eligible for incentive programs.
3. Offenders who have previously had an opportunity to complete CD programming, however withdrew, failed or terminated.

Intake questions may be directed to Randy Tenge through e-mail or call 651-717-6173.

Appendix A:

SENTENCING GUIDELINES GRID
Presumptive Sentence Lengths in Months

Numbered numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree</i> ² <i>Assault, 1st Degree</i>	IX	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2nd Degree</i> (c),(d),(e),(f),(h) ²	VIII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Felony DWI</i>	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
<i>Criminal Sexual Conduct, 2nd Degree</i> (a) & (b)	VI	21	27	33	39 37-41	45 43-47	51 49-53	57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 31-35	38 36-40	43 41-45	48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 23-25	27 26-28	30 29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	21 20-22	23 22-24
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. Mandatory Sentences for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

One year and one day

Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

Effective August 8, 2003

Appendix D: Controlled Substance Crimes: Acts and Amounts

Controlled Substance Offenses Occurring On or After January 1, 2004

Severity Level IX: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 10 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 200 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana or
25 kilos or more Marij. in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 25 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 500 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 500 grams or 500 or more dosage units PCP/Hallucinogen
- (4) 100 kilograms or more Marijuana

Manufacture (Subd. 2a(a))

Manufacture ANY amount of Methamphetamine

Severity Level VIII: Second Degree Controlled Substance Crime (MN. Stat. § 152.022)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 10 grams or 50 or more dosage units PCP/Hallucinogen
- (4) 25 kilograms or more Marijuana
- (5) Cocaine/Narcotic to minor or employs minor
- (6) Any of the Following in Zone or Drug Treatment Facility:
 - (i) Schedule I & II Narcotics or LSD
 - (ii) Methamphetamine/Amphetamine
 - (iii) 5 kilograms or more Marijuana

Possession (subd. 2)

- (1) 6 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 100 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana

Severity Level VI: Third Degree Controlled Substance Crime (MN. Stat. § 152.023)

Sale/Possession With Intent (subd. 1)

- (1) A Narcotic Drug (Including Cocaine and Heroin)
- (2) 10 or more dosage units of Hallucinogen/PCP
- (3) Schedule I,II,III to minor - Not Narcotics
- (4) Schedule I,II,III employs minor - Not Narcotics
- (5) 5 kilograms Marijuana

Possession (subd. 2)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 or more dosage units of Narcotics
- (4) Sch. I & II Narc./5 or more d.u. LSD in Zone or Drug Treatment Facility
- (5) 10 kilograms Marijuana
- (6) Methamphetamine/Amphetamine in Zone or Drug Treatment Facility

Severity Level IV: Fourth Degree Controlled Substance Crime (MN. Stat. § 152.024)

Sale/Possession With Intent (subd. 1)

- (1) Schedule I,II,III (except Marijuana)
- (2) Schedule IV or V to minor
- (3) Employs minor to sell schedule IV or V
- (4) Marijuana in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 10 or more dosage units of Hallucinogen/PCP
- (2) Schedule I,II,III (except Marij.) w/ intent to sell

Severity Level III: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Attempted Manufacture of Methamphetamine (subd. 2a(b))

- (1) Possession of Precursor Chemicals with Intent to Manufacture Methamphetamine

Severity Level II: Fifth Degree Controlled Substance Crime (MN. Stat. § 152.025)

Sale/Possession With Intent (subd. 1)

- (1) Marijuana
- (2) Schedule IV

Possession (subd. 2)

- (1) Possession of Schedule I,II,III,IV - Includes Marijuana
Also Includes: Crack/Cocaine/Narc./PCP/Halluc.
- (2) Procurement by fraud

Severity Level I: Sale of Simulated Controlled Substance (MN. Stat. § 152.097)

Sale

- (1) Sale of ANY amount of a simulated controlled substance

Appendix E: Sentencing Practices for Specific Offenses

The following table lists statistical data for the most common offenses ranked at the same severity levels as the five controlled substance offenses. Aggravated dispositional departure rates are based only on those offenders with a presumptive stayed sentence, and mitigated dispositional departure rates are based only on offenders with a presumptive executed sentence. The Prison Rate is the overall number of offenders that were sentenced to prison, regardless of the presumptive disposition. Durational departure rates and average sentence lengths are based only on offenders sentenced to imprisonment. The "Over Avg" column refers to the overall average sentence length, regardless of criminal history score or presumptive sentence length.

Three sentences were removed from the calculation of average sentence length because these sentences were significantly different than other sentences for that offense and skewed the data. These offenses included a first-degree sex offender (Severity Level IX) sentenced to 450 months, a first-degree burglary offender (Severity Level VIII) sentenced to 240 months, and a theft of motor vehicle offender (Severity Level IV) sentenced to 90 months.

Severity Level	Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg (mos)	Average Sentence (months) by Criminal History						
			Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
Severity Level IX	1 st Deg Drug Offense	386	---	32.4% 125	67.6% 261	2.3% 6	58.2% 152	84.1	69.5 110	75.3 35	88.0 45	96.0 28	103.7 15	108.3 12	136.2 16
	Sex Offenses ¹	121	---	21.5% 26	78.5% 95	26.3% 25	14.7% 14	145.9	137.4 44	117.6 14	162.4 13	146.6 7	128.0 6	153.2 6	298.5 4
	1 st Deg Assault	54	---	25.9% 14	74.1% 40	17.5% 7	25.0% 10	102.6	90.5 20	84.4 7	102.0 3	111.5 2	96.0 1	86.0 1	165.0 6
Severity Level VIII	2 nd Deg Drug Offense	357	---	40.9% 146	59.1% 211	3.8% 8	37.4% 79	58.3	44.3 60	52.2 43	55.1 37	61.0 27	68.0 11	85.0 15	93.9 18
	1 st Deg Aggravated Robbery	122	---	29.5% 36	70.5% 86	9.3% 8	30.2% 26	73.4	41.4 19	52.6 16	53.5 4	71.0 16	76.0 7	89.4 7	127.8 17
	1 st Deg Burglary	74	---	35.1% 26	64.9% 48	6.3% 3	31.3% 15	60.7	49.1 17	58.0 3	53.9 10	67.8 8	82.7 3	68.7 3	103.7 6
	Sex Offenses ¹	70	---	38.6% 27	61.4% 43	9.3% 4	32.6% 14	65.1	56.8 24	64.2 10	79.5 4	79.3 3	92.0 1	0 0	144.0 1
	Criminal Vehicular Homicide	41	---	52.1% 21	48.8% 20	15.0% 3	10.0% 2	62.1	50.1 12	56.0 2	64.0 1	78.0 1	116.5 2	94.0 1	60.0 1
	1 st Deg Arson	21	---	66.7% 14	33.3% 7	14.3% 1	28.6% 2	48.9	52.0 5	41.0 2	0 0	0 0	0 0	0 0	0 0

Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg. (mos)	Average Sentence (months) by Criminal History						
		Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
Drive-By Shooting	16	---	6.3% 1	93.8% 15	0%	33.3%	55.8	47.2	54.8	58.0	59.3	88.0	0	0
Kidnapping	11	---	18.2% 2	81.8% 9	11.1%	44.4%	59.6	44.0	56.0	60.0	24.0	78.0	0	130.0
Manslaughter	9	---	22.2% 2	77.8% 7	42.9%	0%	74.9	68.0	60.0	70.0	0	0	0	120.0

Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg. (mos)	Average Sentence (months) by Criminal History						
		Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
3 rd Deg Drug Offense	505	5.8% 17	46.7% 98	25.5% 129	6.2%	52.7%	33.3	26.3	26.2	30.4	31.9	33.7	37.1	44.8
2 nd Deg Assault ²	323	---	59.8% 193	40.2% 130	15.4%	31.5%	36.0	28.3	33.3	33.8	37.8	37.5	50.0	55.1
Felon with Gun ²	162	---	33.3% 54	66.7% 108	0.9%	35.2%	51.8	45.3	52.1	53.5	46.5	56.4	57.4	54.1
Sex Offenses	160	4.2% 6	16.7% 3	13.1% 21	28.6%	4.8%	45.2	37.0	39.0	35.0	39.0	36.0	66.5	63.0
1 st Deg Burglary	122	6.5% 5	35.6% 16	27.9% 34	8.8%	23.5%	42.6	21.0	27.0	33.6	37.9	43.8	56.3	52.4
2 nd Deg Aggravated Robbery	42	4.0% 1	23.5% 4	33.3% 14	14.3%	28.6%	41.1	21.0	36.0	34.5	39.0	54.0	43.0	43.3
Theft over \$35,000	34	0% 0	20.0% 2	23.5% 8	25.0%	25.0%	57.5	0	0	0	39.0	45.0	40.0	67.2

Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg. (mos)	Average Sentence (months) by Criminal History						
		Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
4 th Deg Drug Offense	145	10.9% 14	37.5% 6	16.6% 24	20.8%	8.3%	24.2	12.03	15.0	17.5	20.0	39.3	25.5	35.4
Terroristic Threats	522	5.8% 27	38.9% 21	11.5% 60	8.3%	31.7%	21.9	12.03	15.0	15.6	19.4	21.2	27.7	34.1
Burglary	475	5.2% 19	17.3% 19	23.2% 110	10.0%	20.0%	27.1	0	12.03	20.3	20.6	23.8	25.8	31.7
3 rd Deg Assault	347	3.7% 11	45.1% 23	11.0% 38	21.1%	15.8%	25.6	12.03	12.03	18.0	29.0	25.7	28.0	33.7
5 th Deg Assault/Domestic Assault	141	7.8% 8	44.7% 17	20.6% 29	6.9%	37.9%	21.9	0	15.0	19.0	18.0	22.7	24.5	26.0
Violation Restraining Order	112	9.8% 8	36.7% 11	24.1% 27	3.7%	33.3%	21.2	0	0	16.3	18.8	20.6	26.6	21.7

Severity Level VI

Severity Level IV

Offense	Num	Dispositional Departure		Prison Rate	Durational Departure		Over Avg (mos)	Average Sentence (months) by Criminal History						
		Agg	Mit		Agg	Mit		0	1	2	3	4	5	6+
Theft from Person	56	2.6%	44.4%	19.6%	9.1%	45.5%	21.9	0	0	12.03	0	22.8	28.5	19.3
Theft of Firearm/Motor Vehicle	50	11.4%	6.7%	36.0%	5.6%	22.2%	23.6	0	15.0	18.0	19.5	23.7	23.3	32.0
Sex Offenses	49	9.3%	16.7%	18.4%	0%	22.2%	21.9	12.03	15.0	0	21.0	21.0	28.7	30.0
5 th Deg Drug Offense	1,851	7.7%	38.4%	11.7%	6.5%	26.4%	17.2	17.3	14.3	14.3	17.2	15.4	17.8	19.8
Theft/Receiving Stolen Property (\$501-2500)	965	3.9%	21.6%	11.4%	9.1%	29.1%	19.6	12.03	12.03	13.0	15.0	15.7	19.1	21.5
Check Forg/Issue Dishonored Check (\$251-2500)	833	5.7%	28.6%	12.5%	5.8%	30.8%	18.3	12.03	14.3	13.0	14.5	16.6	17.3	20.8
Criminal Damage to Property	306	3.3%	0%	5.6%	11.8%	29.4%	16.4	12.03	4	9	13	10	6	60
Financial Transaction Card Fraud (\$501-2500)	168	7.6%	17.4%	17.9%	13.3%	20.0%	20.3	12.03	0	2	4	15.5	18.0	23.5
Public Assistance Fraud (\$501-2500)	60	3.4%	100%	3.3%	0%	0%	14.5	12.03	0	0	0	17.0	0	0

Severity Level III

1 Effective for offenses committed on or after August 1, 2000, statutory provisions require that the presumptive duration for First Degree Criminal Sexual Conduct offenses is 144 months; for crimes committed on or after May 22, the Second Degree Criminal Sexual Conduct Offenses ranked at Severity Level VIII require that the presumptive duration is 90 months. While this negates the durations in the Sentencing Guidelines Grid for most criminal history scores, the presumptive sentence for offenders with scores of 5 or more are still determined by the Sentencing Guidelines Grid.

2 Mandatory minimum sentencing provisions under M.S. §609.11 apply to these offenses and others involving the use of a dangerous weapon. This statute requires that an offense involving the use of a firearm be sentenced to at least 36 months in prison for a first offense (60 months for a second or subsequent) and an offense involving the use of any other dangerous weapon be sentenced to at least 12 months and 1 day in prison (36 months for a second or subsequent). Felon in Possession of a Firearm requires a 60-month sentence of imprisonment. While provisions exist allowing the court to sentence without regard to this mandatory minimum, this is a departure from the Sentencing Guidelines.

Appendix F: Structure of Minnesota Drug Courts

Dodge County Drug Court

Dodge County began planning for its drug court in July 2001, with operation of the adult court beginning in June 2003. All degrees of drug offenders that demonstrate moderate to heavy chemical addiction are considered for the program (first degree manufacture of methamphetamine cases are considered on an individual basis). Offenders with current or past violent offenses under the federal definition are not eligible. Offenders can enter the program after entering a plea or on probation violations, and must pay a \$250 program fee for each three-month period. The drug court program had a first year capacity of 25 participants, with the capacity doubling to 50 participants in subsequent years. Table 1 outlines the phases of the Dodge County Drug Court program.

Table 1. Dodge County Drug Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Stabilization, Orientation, Assessment & Family Intervention	6	3 / week	2 / week	1 / week
II	Sobriety, Self-Esteem & Family Communications	6	2 / week	1 / week	3 / month
III	Peer Relationships, Decision Making, Education/Vocation	6	1 / week	2 / month	2 / month
IV	Aftercare	6	2 / month	1 / month	1 / month

- Phase I completion requires 30 consecutive days of both clean UA's and program participation without unexcused absences.
- Phase II completion requires meeting treatment goals and 60 consecutive days of both sobriety and service participation without unexcused absences. Phase II also requires spouse or significant other support group participation once a week.
- Phase III completion requires meeting education/vocation goals and 90 consecutive days of both sobriety and service participation without unexcused absences.
- Phase IV identifies drug-free support network, relapse prevention strategies, and continued educational and vocational goals.

Dodge County's first process evaluation is scheduled for June 2004, with an outcome evaluation to follow two years later.

Hennepin County Drug Court

Hennepin County began drug court operations in January 1997. The drug court handles all felony level drug offenses and existing companion charges. Drug offenders also charged with a felony person crime are not eligible for the program. Offenders are placed into one of three tracks: diversion, post conviction/non-treatment, and post conviction/treatment. The program has an average of 4,155 clients on any given day. Tables 2 through 4 outline the phases for each track.

Table 2. Hennepin County Drug Court Diversion Track Phase Treatment Schedule

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Education & Treatment	0 - 90	1 / week	Case by Case	1 / month
II Aftercare/Support Groups	91 - 365	Random	Case by Case	Optional

Table 3. Hennepin County Drug Court Post Conviction – Non Treatment Phase Treatment Schedule

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Assessment/Employment	0 - 90	2 / week	2 / month	2 / month
II Employment or Structured Activities	91 - 180	1 / week	1 / month	1 / month
III Employment or Structured Activities	181 - 365	2 / month	Every other month	Every other month
IV Administrative Probation	366 - 730	none	None unless new offense	None unless new offense

- Phase I requires full time employment or a development plan w/job search.
- Phase II requires full time employment or minimum of 20 hours per week structured activity.
- Phase III requires full time employment or minimum of 32 hours per week structured activity.
- Phase IV offender is on administrative probation unless new offense.

The Post Conviction – Treatment track has four phases.

Table 4. Hennepin County Drug Court Post Conviction – Treatment Phase Treatment Schedule

Phases Emphasis	Length In Days	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I Treatment/Aftercare	0 - 90	2 / week	No contact until treatment completed	1 / month
II Aftercare/Support Group	91 - 180	1 / week	1 / month	1 / month
III Support Group	181 - 365	2 / month	Every other month	Every other month
IV Administrative Probation	366 - 730	none	None unless new offense	None unless new offense

- Phase I requires full time employment or a development plan w/job search.
- Phase II requires full time employment or minimum of 20 hours per week structured activity.
- Phase III requires full time employment or minimum of 32 hours per week structured activity.
- Phase IV offender is on administrative probation unless new offense.

This report included information on the process and outcome evaluation of the Hennepin County Drug Court completed in May 1999. No additional evaluations are currently planned.

Ramsey County Drug Court

The Ramsey County Adult Substance Abuse Court began operations in October 2002. The court targets only fourth and fifth degree drug offenders with a level three substance abuse problem under the Rule 25 Assessment Tool; first and second degree offenders are excluded, and third degree offenders are considered on a case by case basis. The court also accepts low-level property offenders if their crimes are drug related. Offenders with violence in current or past offenses and residential burglary offenders are not accepted. Offenders can enter the program under four tracks: diversion, deferred prosecution, post-plea, and probation violation. The program is limited to 125 participants, who are charged a \$15.00 monthly fee. The three phases of Ramsey County's drug court are outlined in Table 5.

Table 5. Ramsey County Adult Substance Abuse Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Assessment, Stabilization & Treatment	4	2 / week	1 / week	1 / week
II	Problem-Solving Aftercare	4	1 / week	Case by case	3 / month
III	Transition / Re-Entry	4	1-2 times / month	Case by case	1-2 / month

- Phase I emphasizes meeting housing and treatment needs.
- Phase II emphasizes problem solving skills with cognitive-behavioral programming and educational or employment readiness programs.
- Phase III emphasizes introduction into sober, mainstream society through employment or education and ends in graduation.

The Ramsey County Adult Substance Abuse Court is currently in the early stages of a process evaluation.

St. Louis County (Duluth) Drug Court

The Duluth Drug Court began planning in November 2001 and accepted its first clients in June 2002. The court targets only third through fifth degree drug offenders; first and second degree offenders, as well as offenders covered under the federal definition of "violent offender," are not eligible for the program. Offenders can enter the program pre-plea, post-plea, or on probation violations. The court capped program participation at 80 offenders in the first year. Participants are required to pay a \$400 fee as a condition of the program. Table 6 outlines the four phases of the Duluth Drug Court program.

Table 6. Duluth Drug Court Phase Treatment Schedule

Phase	Emphasis	Length In Months	Minimum Urinalysis Testing	Meetings w/ Case Manager	Reviews with Drug Court Judge
I	Treatment / Cognitive Skills Training	2-3	5-8 / month	2-3 / week	1 / week
II	Aftercare	2-3	5-8 / month	1 / Week Random home and phone checks	Every other week
III	Monthly Reporting	6	3-5 / month	2 / month Random home and phone checks	1 / month
IV	Commencement	Remainder of Probation Term	2-3 / year	Supervised or Unsupervised Probation	None unless violation

- Phase I may include jail, work release or other sanctions and begins the period of treatment. Treatment must be successfully completed before progressing to the next phase.
- Phase II requires compliance with aftercare program and continued cognitive training skills.
- Phase III requires monthly court appearances.
- Phase IV is commencement & the offender moves to either supervised or unsupervised probation.

The Duluth Drug Court is in the process of completing a process evaluation.

Stearns County Drug Court

Planning for the Stearns County Drug Court began in October 2001, with the first clients accepted in July 2002. The court targets only chemically addicted third through fifth degree drug offenders; first and second degree offenders, as well as offenders covered under the federal definition of "violent offender," are not eligible for the program. Offenders can enter the program pre-plea, post-plea, or on probation violations. Table 7 outlines the three phases of Stearns County's Drug Court program.

Table 7. Stearns County Drug Court Phase Treatment Schedule

Phase	Emphasis	Minimum Length In Months	Minimum Urinalysis Testing	Minimum Meetings w/ Staff	Reviews with Drug Court Judge
I	Treatment	3	2 / week	2 / week	3 / month
II	Aftercare	3	2 / week	2 / week	2 / month
III	Education / Vocation	6	1 / week	2 / month	1 / month

- Phase I requires completion of primary chemical dependency treatment and three months w/o sanctions or dirty UA's.
- Phase II requires completion of all aftercare treatment requirements and a minimum of three months w/o sanctions or dirty UA's. Movement out of Phase II also requires a case disposition, which may include diversion.
- Phase III emphasizes educational and vocational goals and requires six months w/o sanctions or dirty U/A's.

Stearns County plans to conduct a process evaluation in June 2004 and a follow up process and outcome evaluation in 2005.

Age
Agen

JULIANNE ORTMAN

Senator, District 34
G-21 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155-1206

Office: (651) 296-4837
Fax: (651) 767-0933
E-mail: sen.julianne.ortman@senate.mn



Senate

State of Minnesota

I am pleased to announce the bi-partisan list of Senators who have signed on in support of the concepts outlined in Senate File 1138 legislation:

Anderson	Higgins	Moua
Bakk	Hottinger	Neuville
Betzold	Johnson, DE	Nienow
Cohen	Koering	Olson
Day	Larson	Ortman
Dibble	Lourey	Pappas
Dille	Limmer	Robling
Fishbach	Marko	Ruud
Foley	Marty	Scheid
Frederickson	McGinn	Senjem
Gaither	Metzer	Skoe
Hann	Michele	Thomassoni

Additionally, the following people are knowledgeable about the relevant subject matter, and have been consulted in the preparation of this bill:

Dan Knuth, Consultant, Drug Policy Reform Group	Neil Melton, Exec. Director, MN Post Board
Mary Ellison, MN Dept. of Public Safety	Chief John Laux, Bloomington Police
Don Eubanks, Director, Chemical Health Division, Minnesota Department of Human Services	Michael Fahey, Carver County Attorney
Judge Joanne Smith, Second Judicial District	Sheriff Bud Olson, Carver County
Tom Johnson, President, Council on Crime and Justice	Detective Todd Turpitt, Hennepin Co. Sheriff's Narcotics Unit
Steven C. Borchardt, Olmstead County Sheriff	Hilary Caliguri, Assistant Hennepin County Attorney
Brock Hunter, Attorney at Law,	Dan Storkamp, Information & Technology Director, Department of Corrections
Harland Johnson, Exec. Director, MN Chiefs of Police Association	Captain Rich Stanek, Commander, Central Investigations Division, Minneapolis Police Department
William A. Gillespie, Exec. Director, MN Police and Peace Officers Association	Kevin Kajer, Chief Administrator, MN Board of Public Defense
John Stuart, State Public Defender	Lieutenant John Lageson, Hennepin County Sheriff Narcotics Division
Barb Tombs, Director, MN Sentencing Guidelines Commission	Peter Ivy, Prosecutor, Carver County Attorney's Office
Phil Carruthers, Director, Prosecution Division, Ramsey County Attorney's Office	Steve Holmgren, 1 st District Public Defender
Pete Cahill, Hennepin County Attorney's Office	Jeffrey Hunsberger, MN Dept. of Human Services, Chemical Health Division

Tax Committee • Transportation Committee • Judiciary Committee • Public Safety Budget Division

Representing the Cities of:

Chanhausen, Chaska, Cologne, Hamburg, Mayer, New Germany, Norwood Young America, Victoria and Watertown

Representing the Townships of:

Benton, Camden, Chaska, Dahlgren, Hancock, Hollywood, Jackson, Laketown,
Louisville, St. Lawrence, San Francisco, Watertown and Young America





**Minnesota Board
of Peace Officer
Standards and Training**

1600 University Avenue, Suite 200
St. Paul, MN 55104-3825
(651) 643-3060 • FAX (651) 643-3072
TDD (651) 297-2100

March 15, 2005

The Honorable Julianne Ortman
G-21 State Office Building
Saint Paul, Minnesota 55155

Dear Senator Ortman:

Thank you for recognizing the importance of peace officer training. Please accept this letter as support for SF 1138 on behalf of the Minnesota Board of Peace Officer Standards and Training (POST).

In Minnesota, peace officers are required to complete 48 hours of continuing education every three years to maintain their license. Continued training is imperative for any licensed profession, but especially for the ones entrusted to maintain the public's safety in the communities across the state.

Licensed peace officers attend a variety of training each year depending on the needs of their department and the issues facing their cities and towns. Critical training areas include use of force and firearms training, pursuit driving, community policing and response to mental health-related incidents.

Included in SF 1138 is a one million dollar appropriation for fiscal years 2006 and 2007 to the Board for reimbursements for peace officer training. In 2004, law enforcement agencies were reimbursed \$358 per-officer. If SF 1138 is signed into law, the per-officer share would increase to \$481.

To put it into perspective, fifteen years ago the per-officer share was \$477 and has decreased every year since. An increase to the per-officer reimbursement is badly needed. Annual training costs per-officer average from \$1900 to \$2500 – and that amount is certain to multiply. Raising the per-officer share will help local law enforcement agencies offset the cost of training and continue to ensure public safety needs are met.

Again, thank you for your continued commitment to law enforcement. If I can be of any assistance, please contact me at 651.643.3063.

Sincerely,

A handwritten signature in cursive script that reads "Neil W. Melton".

Neil W. Melton
Executive Director



March 17, 2005

Senator Julianne Ortman
155 State Office Building
St. Paul, MN 55155

Re: Senate File 1138

Dear Senator Ortman:

I am writing today in support of Senate File 1138, a bill changing certain criminal sentencing, allowing selected expungement, and adjusting certain sentences, along with appropriating money.

I apologize for not being available to testify and stand for questions, but I will be in Washington DC on business.

This bill addresses a long-time observation of mine going back to 1968 when I entered law enforcement. The observation is that in most cases, locking up drug offenders when their crime is essentially possessing amounts considered for personal use, is not working. We need to shift these first time offenders to realistic and effective diversion and treatment programs.

Two issues addressed in this bill that I see as core components are:

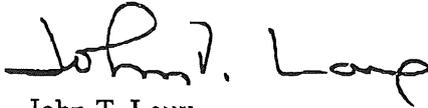
1. First time drug offenders as described in this bill are diverted into realistic and effective treatment programs. The tailored treatment programs have an in-patient and out-patient component, along with the all important aftercare element that vastly improves the chance for success.
2. The appropriation of money to the POST Board for police officer training is also vital. As a former POST Board Executive Director, I can tell you first hand that the monies granted are very important for all 500 plus agencies but these monies in Greater Minnesota most often constitute 100% of their training budgets. Every dollar allocated will advance the professionalism and skill level of law enforcement in Minnesota.

Thank you for your consideration of this legislation. We need to do something to stop the revolving door of people being convicted multiple times and sent to jail, workhouses and prisons with little hope for the future.

I will be happy to speak with any of you in the future regarding this bill or any other issue of concern.

Sincerely,

BLOOMINGTON POLICE DEPARTMENT

A handwritten signature in black ink, appearing to read "John T. Laux". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John T. Laux
Chief of Police

LJL

Carver County



Office of the Sheriff
606 East 4th Street, Chaska, MN 55318

March 17, 2005

Honorable Senator Julianne Ortman
Rm G21
State Office Building
St. Paul, MN. 55155-1206

Dear Senator Ortman,

There is a political reality facing our state involving our ability to house the growing number of state sentenced inmates in our prison system. I have had an opportunity to read and understand your legislation pertaining to Senate File 1138, changing criminal sentencing for certain controlled substance possessors. As the Sheriff of Carver County who deals with first time drug offenders on a regular basis I can accept the fact these offenders may become successful members of our communities if we give them an opportunity to seek treatment for their addictive behavior. Your bill is specific to it's intent in holding the offender responsible for the crime they have committed, yet giving them an opportunity to prove to society and the criminal justice system they can successfully change their addictive behavior.

Your bill also addresses a very real need in providing state funding for chemical health and criminal justice agencies that must work with these offenders. It is not enough to legislate bills to affect a better outcome for our offenders in this state. We must recognize the difficulty local jurisdictions face when implementing laws without funding support. It is appropriate to assist our state and local agencies with the necessary funds to implement such a plan you are proposing.

In closing, it is my understanding your bill is not intended to take a position that is "soft on crime." It is addressing the real issue of holding the offender accountable for their addictive behavior and "giving them a chance" to right a wrong. All of us that decide policy, whether at the local, state or federal level, must be considerate of our duty to the taxpayers we serve. We must be willing to be good stewards of our governmental resources, recognizing the need for the health, safety and welfare of our citizens. If your legislation can have that desired outcome, we have done our jobs as public servants well.

Best Regards,
Bud Olson

Byron 'Bud' Olson, Sheriff



NEWS FROM . . .

STATE SENATOR JULIANNE ORTMAN

SERVING THE RESIDENTS OF CARVER AND SCOTT COUNTIES

For immediate release
March 17, 2005

Contact: Jeremy Landon
651.296.0548

Ortman Releases Poll Results, Outlines Legislation to Create Treatment Options for Low Level Drug Offenders and Refocus Corrections Resources

(St. Paul) Flanked by a bipartisan group of legislators, law enforcement officials, prosecutors, public defenders, and chemical dependency counselors, State Senator Julianne Ortman (R-Chanhassen) and State Representative John Lesch (D-St. Paul) today outlined a legislative proposal designed to create treatment options for low level drug offenders and redirect state corrections resources.

The proposed legislation would permit judges to issue stayed sentences for first-time offenders in exchange for enrollment in a court approved chemical dependency program. Upon successful completion of the program, one year of aftercare, and the approval of the treatment provider, the offender could pursue an expungement of civil access to the criminal record.

The cost of enrollment in such a program, if the court so chooses, would be the obligation of the defendant. There is a community service provision for the indigent.

“There is consensus among Minnesotans, and in the State Senate, that treatment options should be made available to first-time low level drug offenders, and that there is disproportionality in some of our sentences for these offenders,” said Ortman.

“This bill is an attempt to adopt a comprehensive approach, and to add a new focus for our resources — law enforcement, courts, corrections, chemical health professionals and public defenders all will be empowered to identify individuals who want to take responsibility for their addictions and earn the chance at a fresh start.”

“This is not about letting first-time drug offenders go free. This is about providing them the treatment and help they need to turn their lives around, while protecting the integrity of the criminal justice system and holding individuals accountable for their actions,” said former Public Safety Commissioner and a 22-year law enforcement veteran Rich Stanek. “This bill strikes the right balance, and will prevent egregious offenders from being let back out on the street.”

Under the legislation, drug offenders currently in the custody of the Department of Corrections could be granted early supervised release if they have served half of their sentence, the original length of their sentence was at least 18 months, and they have successfully completed a prison treatment program.

-More-

“Five to ten year sentences for low level drug offenders should be adjusted downward after the offender completes a six-month rehabilitation program and treatment professionals have certified that the offender is rehabilitated,” Ortman continued.

“In most cases, locking up drug offenders, when their crime is essentially possessing amounts considered for personal use, is not working,” said Bloomington Police Chief John Laux. “We need to shift these first-time offenders and selected others to realistic and effective diversion and treatment programs.”

The bill appropriates \$1 million per year for the next two years for the development and expansion of prison-based methamphetamine treatment programs, \$1 million per year for Tier II consolidated low-income chemical dependency treatment funds, and \$1 million per year for police training.

“This bill is important because it accurately identifies the problem, and offers real solutions to helping people with reentry into society while holding them accountable,” said Sherman Patterson, a Community Outreach Coordinator in the Jordan neighborhood of Minneapolis.

Poll Results Indicate Strong Public Support for Treatment Options

According to poll results released at the press conference, 76 percent of Twin Cities metro area residents and 63 percent of greater Minnesota residents support sending those convicted of drug possession to treatment rather than incarcerating them, compared to 13 percent and 22 percent who oppose such an approach.

When asked what they believe is the more effective way to spend public funds to deal with drug users, 77 percent of metro area residents and 67 percent of greater Minnesota residents support funding mandatory treatment programs, while only 9 percent and 17 percent support building more prisons to incarcerate drug users.

The poll, conducted by Mason-Dixon Polling and Research, Inc. of Washington, D.C., has a four percent margin of error.

The bill is scheduled for a hearing in the Senate Crime Prevention and Public Safety Committee at 3:00 today.

Julianne Ortman can be reached at (651)296-4837, by mail at G-21 State Office Building, 100 Rev. Dr. MLK Jr. Blvd., St. Paul, MN 55155, or via e-mail at sen.julianne.ortman@senate.mn.

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Minnesota Senate

House | Senate | Joint Departments and Commissions | Bill Search and Status | Statutes, Laws, and Rules

KEY: ~~stricken~~ = old language to be removed
underscored = new language to be added

NOTE: If you cannot see any difference in the key above, you need to change the display of stricken and/or underscored language.

Authors and Status ■ List versions

S.F. No. 1138, as introduced 84th Legislative Session (2005-2006) Posted on Feb 18, 2005

1.1 A bill for an act

1.2 relating to public safety; changing criminal

1.3 sentencing for certain controlled substance

1.4 possessors; authorizing expungement of conviction

1.5 records for certain controlled substance possessors;

1.6 adjusting the terms of imprisonment for certain

1.7 controlled substance offenders; appropriating money;

1.8 amending Minnesota Statutes 2004, sections 609A.02, by

1.9 adding a subdivision; 609A.03, subdivision 5, by

1.10 adding a subdivision; proposing coding for new law in

1.11 Minnesota Statutes, chapters 152; 244.

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

1.13 Section 1. [152.0255] [STAYED SENTENCES FOR FIRST-TIME

1.14 CONTROLLED SUBSTANCE POSSESSORS.]

1.15 Subdivision 1. [PRESUMPTIVE STAYED SENTENCE, FIRST-TIME

1.16 FOURTH- AND FIFTH-DEGREE CONTROLLED SUBSTANCE POSSESSORS.] (a)

1.17 Notwithstanding any contrary provision of the sentencing

1.18 guidelines or any other law, the court shall presume that an

1.19 offender convicted of violating section 152.024, subdivision 2,

1.20 or 152.025, subdivision 2, be sentenced to a stayed sentence if

1.21 the offender has not previously been convicted or adjudicated

1.22 delinquent for a violation of this chapter, or an offense from

1.23 another jurisdiction similar to an offense under this chapter.

1.24 The court may impose appropriate terms and conditions on the

1.25 offender.

1.26 (b) When a court stays the sentence of an offender

1.27 described in paragraph (a), it shall order the offender to

1.28 successfully complete a chemical dependency treatment program

2.1 designated by the court. The court shall select a program that

2.2 is appropriate given the offender's chemical dependency needs.

2.3 When possible, the program must be tailored specifically to the

2.4 offender's specific addiction, have an inpatient and outpatient

2.5 component, including aftercare, and be of a sufficient duration

2.6 to adequately address the offender's chemical dependency issues.

2.7 (c) A sentence under this subdivision is not a departure

2.8 under the sentencing guidelines.

2.9 Subd. 2. [STAYED SENTENCES AUTHORIZED; FIRST-TIME FIRST-,

2.10 SECOND-, AND THIRD-DEGREE CONTROLLED SUBSTANCE POSSESSORS.] (a)

2.11 Notwithstanding any contrary provision of the sentencing

2.12 guidelines or any other law, the court may stay the execution of

2.13 sentence for an offender convicted of violating section 152.021,

2.14 subdivision 2; 152.022, subdivision 2; or 152.023, subdivision

2.15 2, if the offender has not previously been convicted or

2.16 adjudicated delinquent for a violation of this chapter, or an

2.17 offense from another jurisdiction similar to an offense under

2.18 this chapter. The court may impose appropriate terms and

2.19 conditions on the offender.

2.20 (b) If the court stays an offender's sentence under

2.21 paragraph (a), it shall order the offender to successfully

2.22 complete a chemical dependency treatment program designated by

2.23 the court. The court shall select a program that is appropriate

2.24 given the offender's chemical dependency needs. When possible,

2.25 the program must be tailored specifically to the offender's
2.26 specific addiction, have an inpatient and outpatient component,
2.27 including aftercare, and be of a sufficient duration to
2.28 adequately address the offender's chemical dependency issues.

2.29 (c) A sentence under this subdivision is not a departure
2.30 under the sentencing guidelines.

2.31 Subd. 3. [COSTS.] When a court sentences an offender under
2.32 this section, it may require the offender to pay the costs of
2.33 the treatment program as well as other costs authorized by law.

2.34 Subd. 4. [PRESENTENCE INVESTIGATION.] The court shall
2.35 consider the results of the presentence investigation under
2.36 section 609.115, including the chemical use assessment, and any
3.1 other relevant information before sentencing an offender
3.2 described in this section.

3.3 Subd. 5. [EXCEPTION; PRIOR VIOLENT CRIMES OR POSSESSION OF
3.4 DANGEROUS WEAPON.] Except as otherwise provided in this section,
3.5 this section does not apply to an offender who has previously
3.6 been convicted or adjudicated delinquent for a violent crime as
3.7 defined in section 609.1095 or who possessed a dangerous weapon
3.8 at the time of arrest.

3.9 [EFFECTIVE DATE.] This section is effective August 1, 2005,
3.10 and applies to offenders sentenced on or after that date.

3.11 Sec. 2. [244.045] [SUPERVISED RELEASE OF CONTROLLED
3.12 SUBSTANCE OFFENDERS.]

3.13 (a) Notwithstanding any contrary provision of the
3.14 sentencing guidelines or any other law, but subject to paragraph
3.15 (c), the commissioner of corrections shall place an offender
3.16 committed to the commissioner's custody for a violation of
3.17 section 152.022, 152.023, 152.024, or 152.025 on supervised
3.18 release after the offender has served one-half of the offender's
3.19 executed sentence if:

3.20 (1) the original length of the offender's executed sentence
3.21 was 18 months or longer; and

3.22 (2) while in prison for the offense, the offender
3.23 successfully completed a chemical dependency treatment program
3.24 of at least six months in duration.

3.25 (b) Successful completion of the program described in
3.26 paragraph (a), clause (2), is to be determined by the program
3.27 director.

3.28 (c) No offender who violates a disciplinary rule or refuses
3.29 to participate in a rehabilitative program as required under
3.30 section 244.03 shall be placed on supervised release until the
3.31 offender has served the disciplinary confinement period for that
3.32 disciplinary sanction or until the offender is discharged or
3.33 released from punitive segregation confinement, whichever is
3.34 later. The imposition of a disciplinary confinement period
3.35 shall be considered to be a disciplinary sanction imposed upon
3.36 an offender, and the procedure for imposing the disciplinary
4.1 confinement period and the rights of the offender in the
4.2 procedure shall be those in effect for the imposition of other
4.3 disciplinary sanctions at each state correctional institution.

4.4 [EFFECTIVE DATE.] This section is effective August 1, 2005,
4.5 and applies to persons incarcerated or sentenced on or after
4.6 that date.

4.7 Sec. 3. Minnesota Statutes 2004, section 609A.02, is
4.8 amended by adding a subdivision to read:

4.9 Subd. 1a. [OTHER CONTROLLED SUBSTANCE OFFENSES;
4.10 CONVICTIONS.] A petition may be filed under section 609A.03 to
4.11 seal all records relating to an arrest, indictment or
4.12 information, trial, or verdict for a violation of section
4.13 152.021, subdivision 2; 152.022, subdivision 2; 152.023,
4.14 subdivision 2; 152.024, subdivision 2; or 152.025, subdivision
4.15 2, if the actions or proceedings were not resolved in favor of
4.16 the petitioner, and:

4.17 (1) the petitioner received a stayed sentence under section
4.18 152.0255;

4.19 (2) the petitioner successfully completed and fully paid
4.20 for a chemical dependency treatment program as described in
4.21 section 152.0255, subdivision 1, paragraph (b), or subdivision
4.22 2, paragraph (b), and has not violated any other terms or

4.23 conditions imposed by the sentencing court;
 4.24 (3) at least a year has elapsed since the petitioner
 4.25 completed the chemical dependency treatment program and during
 4.26 that time the petitioner has not illegally used or possessed a
 4.27 controlled substance or violated any law; and
 4.28 (4) the petitioner has fully paid all of the prosecution
 4.29 and other costs imposed on the petitioner by the sentencing
 4.30 court.
 4.31 If the court determines that the petitioner is indigent, the
 4.32 court may allow the petitioner to perform an amount of community
 4.33 service having a monetary value of up to 50 percent of the costs
 4.34 described in clauses (2) and (4). The petitioner is responsible
 4.35 for paying the remaining costs owed before obtaining an
 4.36 expungement.

5.1 [EFFECTIVE DATE.] This section is effective August 1, 2005.
 5.2 Sec. 4. Minnesota Statutes 2004, section 609A.03,
 5.3 subdivision 5, is amended to read:
 5.4 Subd. 5. [NATURE OF REMEDY; STANDARD; FIREARMS
 5.5 RESTRICTION.] (a) Except as otherwise provided by
 5.6 paragraph paragraphs (b) and (c), expungement of a criminal
 5.7 record is an extraordinary remedy to be granted only upon clear
 5.8 and convincing evidence that it would yield a benefit to the
 5.9 petitioner commensurate with the disadvantages to the public and
 5.10 public safety of:
 5.11 (1) sealing the record; and
 5.12 (2) burdening the court and public authorities to issue,
 5.13 enforce, and monitor an expungement order.
 5.14 (b) Except as otherwise provided by this paragraph, if the
 5.15 petitioner is petitioning for the sealing of a criminal record
 5.16 under section 609A.02, subdivision 3, the court shall grant the
 5.17 petition to seal the record unless the agency or jurisdiction
 5.18 whose records would be affected establishes by clear and
 5.19 convincing evidence that the interests of the public and public
 5.20 safety outweigh the disadvantages to the petitioner of not
 5.21 sealing the record.
 5.22 (c) If the petitioner is petitioning for the sealing of a
 5.23 criminal record under section 609A.02, subdivision 1a, the court
 5.24 shall grant the petition if the petitioner establishes by a
 5.25 preponderance of the evidence that:
 5.26 (1) the petitioner meets the criteria described in section
 5.27 609A.02, subdivision 1a; and
 5.28 (2) it would yield a benefit to the petitioner commensurate
 5.29 with the disadvantages to the public and public safety of:
 5.30 (i) sealing the record; and
 5.31 (ii) burdening the court and public authorities to issue,
 5.32 enforce, and monitor an expungement order.
 5.33 (d) If the court issues an expungement order it may require
 5.34 that the criminal record be sealed, the existence of the record
 5.35 not be revealed, and the record not be opened except as required
 5.36 under subdivision 7. Records must not be destroyed or returned
 6.1 to the subject of the record.
 6.2 [EFFECTIVE DATE.] This section is effective August 1, 2005.
 6.3 Sec. 5. Minnesota Statutes 2004, section 609A.03, is
 6.4 amended by adding a subdivision to read:
 6.5 Subd. 6a. [CERTAIN CONTROLLED SUBSTANCE OFFENDERS;
 6.6 DISCHARGE FROM PROBATION.] If the court orders the sealing of
 6.7 the criminal record of a petitioner under subdivision 5,
 6.8 paragraph (c), it shall discharge the petitioner from probation
 6.9 for the offense.
 6.10 [EFFECTIVE DATE.] This section is effective August 1, 2005.
 6.11 Sec. 6. [CONTROLLED SUBSTANCE OFFENDERS CURRENTLY IN
 6.12 PRISON; SUPERVISED RELEASE.]
 6.13 An offender meeting the criteria described in Minnesota
 6.14 Statutes, section 244.045, who completed a chemical dependency
 6.15 treatment program before August 1, 2005, while in prison for
 6.16 that offense, shall be placed on supervised release by the
 6.17 commissioner of corrections within a reasonable time after
 6.18 presenting the program director's certification to the
 6.19 commissioner showing that the offender successfully completed
 6.20 the program.

- 6.21 [EFFECTIVE DATE.] This section is effective the day
- 6.22 following final enactment.
- 6.23 Sec. 7. [APPROPRIATIONS.]
- 6.24 Subdivision 1. [CORRECTIONS.] \$1,000,000 for the fiscal
- 6.25 year ending June 30, 2006, and \$1,000,000 for the fiscal year
- 6.26 ending June 30, 2007, are appropriated from the general fund to
- 6.27 the commissioner of corrections for the development, expansion,
- 6.28 and operation of prison-based chemical dependency treatment
- 6.29 programs, including, but not limited to, methamphetamine
- 6.30 treatment programs.
- 6.31 Subd. 2. [HUMAN SERVICES.] \$1,000,000 for the fiscal year
- 6.32 ending June 30, 2006, and \$1,000,000 for the fiscal year ending
- 6.33 June 30, 2007, are appropriated from the general fund to the
- 6.34 commissioner of human services for deposit into the chemical
- 6.35 dependency treatment fund for Tier II chemical dependency
- 6.36 treatment of persons with low incomes.
- 7.1 Subd. 3. [PEACE OFFICERS STANDARDS AND TRAINING
- 7.2 BOARD.] \$1,000,000 for the fiscal year ending June 30, 2006, and
- 7.3 \$1,000,000 for the fiscal year ending June 30, 2007, are
- 7.4 appropriated from the general fund to the Peace Officers
- 7.5 Standards and Training Board for reimbursements for peace
- 7.6 officer training.

Please direct all comments concerning issues or legislation
to your House Member or State Senator.

For Legislative Staff or for directions to the Capitol, visit the Contact Us page.

General questions or comments.

1 Senator moves to amend S.F. No. 1138 as follows:

2 Page 3, line 2, after the period, insert "The court may
3 sentence the offender under this section only if the sentence is
4 appropriate based on the results of the assessment."

5 Page 3, line 21, delete "and"

6 Page 3, line 24, before the period, insert "; and

7 (3) the chemical dependency treatment provider determined
8 that the offender committed the crime as a result of a
9 controlled substance addiction"

10 Page 3, lines 26 and 27, delete "program director" and
11 insert "chemical dependency treatment provider"

12 Page 4, line 33, delete "of up to 50" and insert "from 25
13 to 100"

14 Page 5, line 24, delete "shall" and insert "may"

HOW THE POLL WAS CONDUCTED

This poll was conducted by Mason-Dixon Polling & Research, Inc. of Washington, D.C. February 11 through February 14, 2005. A total of 625 registered Minnesota voters were interviewed statewide by telephone. All stated they regularly vote in state elections.

Those interviewed were selected by the random variation of the last four digits of telephone numbers. A cross-section of exchanges was utilized in order to ensure an accurate reflection of the state. Quotas were assigned to reflect voter turn-out by county.

The margin for error, according to standards customarily used by statisticians, is no more than plus or minus 4 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if the entire population were sampled. The margin for error is higher for any subgroup, such as a regional or gender grouping.

POLL RESULTS

QUESTION: Do you support or oppose giving those convicted of drug possession community punishment that includes treatment for their addiction rather than incarcerating them?

	<u>STATE</u>	<u>MEN</u>	<u>WOMEN</u>	<u><50</u>	<u>50+</u>	<u>MNPLS/ STP METRO</u>	<u>REST OF STATE</u>
SUPPORT	70%	65%	75%	72%	68%	76%	63%
OPPOSE	17%	24%	10%	17%	17%	13%	22%
UNDECIDED	13%	11%	15%	11%	15%	11%	15%

QUESTION: Which do you feel is the more effective way to spend public funds to deal with drug users: (ORDER ROTATED)

- build more prisons to incarcerate more drug users, OR
- fund mandatory treatment programs for drug users?

	<u>STATE</u>	<u>MEN</u>	<u>WOMEN</u>	<u><50</u>	<u>50+</u>	<u>MNPLS/ STP METRO</u>	<u>REST OF STATE</u>
PRISONS	13%	17%	9%	13%	13%	9%	17%
TREATMENT	72%	66%	78%	69%	75%	77%	67%
UNDECIDED	15%	17%	13%	18%	12%	14%	16%

Drug Sentencing Bill Highlights

Drug crime is prevalent in Minnesota

- There were 6,032 arrests for drug sales in Minnesota during 2002
- There were 12,946 total arrests for drug possession in Minnesota during 2002
- 2,047 inmates in Minnesota were arrested on drug charges
- Nearly half of these inmates were arrested on methamphetamine charges
- According to 2000-2001 data from the National Household Survey on Drug Abuse, 1.27% of Minnesota citizens reported past year dependence on illicit drugs. This number is 4.06% for the 18-25 age group..
- During 2002, there were 3,760 juvenile arrests in Minnesota for drug violations
- National statistics indicate that many property crimes, drug crimes, and violent crimes are committed in an effort to buy drugs
- The Bureau of Justice Statistics (BJS) and the National Center on Addiction and Substance Abuse (CASA) estimate that from 60% to 83% of the Nation's correctional population have used drugs at some point in their lives; this is twice the estimated drug use of the total U.S. population (40%).

Drug crime is costly

- The estimated cost of incarcerating drug offenders in Minnesota in 2005 is \$42,009,948
- The average methamphetamine case costs the state more than \$125,000
- The Minnesota Sentencing Guidelines Commission estimated that \$30 million could be saved by focusing on treatment, rather than prison

The best remedy for chemical dependency is rehabilitation, not incarceration

- Bill provides an opportunity for offenders to receive treatment for addiction
- Opportunity would not extend to those with a history of drug or violent crime
- Those who have served longer sentences could qualify for early supervised release if they undergo chemical dependency treatment.
- Rehabilitation under this bill would not be a departure under the sentencing guidelines.

US Department of Health and Human Services survey of 1,799 found the following:

- The overall drop in the use of *any* illicit drug following treatment was 21 percent; a 14 percent decline in alcohol use; 28 percent in marijuana use; 45 percent in cocaine use; 17 percent in crack use; and a 14 percent drop in the heroin use.
- Those remaining in treatment the longest were more likely to reduce or eliminate abuse of substances following treatment.
- Most criminal activity, including breaking and entering, drug sales, prostitution, driving under the influence and weapons use declined by between 23 and 38 percent after drug treatment.
- There was a noticeable shift toward regaining and retaining child custody after drug abuse treatment.
- More reliable housing was secured following treatment.

Federal Bureau of Prisons study of drug abuse treatment programs found the following:

- 44.3 percent of male inmates who completed the residential drug abuse treatment program were likely to be re-arrested or revoked within three years after release to supervision in the community, compared to 52.5 percent of those inmates who did not receive such treatment.

“State of Minnesota, Profile of Drug Indicators” April 2004
<http://www.whitehousedrugpolicy.gov/statelocal/mn/mn.pdf>

Inmate Profile as of January 1, 2005*

(*January 1, 2005 numbers are preliminary)

Drug Offender Inmates = 2,090

Distribution of Drug Offense Degrees

Degree	Number	Percent
First Degree	931	44.5
Second Degree	588	28.1
Third Degree	309	14.8
Fourth Degree	17	0.9
Fifth Degree	224	10.7
Other	21	1.0
TOTAL	2,090	100.0

Sentence Length by Drug Offense Degree

Degree	1-2 Years	2-3 Years	3-5 Years	5-10 Years	Over 10 Years	Total
First Degree	11	16	219	571	114	931
Second Degree	12	44	292	235	5	588
Third Degree	49	105	144	11	0	309
Fourth Degree	9	6	1	0	1	17
Fifth Degree	192	17	12	3	0	224
Other	5	0	4	7	5	21
Total	278	188	672	827	125	2,090

Sentence Length by Drug Offense Degree (Percentages)

Degree	1-2 Years	2-3 Years	3-5 Years	5-10 Years	Over 10 Years	Total
First Degree	1.2	1.7	23.5	61.3	12.3	931
Second Degree	2.0	7.5	49.6	40.0	0.9	588
Third Degree	15.8	34.0	46.6	3.6	0.0	309
Fourth Degree	52.9	35.3	5.9	0.0	5.9	17
Fifth Degree	85.7	7.6	5.4	1.3	0.0	224
Other	23.8	0.0	19.0	33.3	23.9	21

Note: All percentages are row percentages

Drug Type by Drug Offense Degree

Degree	Meth	Crack	Cocaine	Heroin	Marijuana	Amphetamine
First Degree	621	84	163	6	4	39
Second Degree	282	137	132	10	5	14
Third Degree	81	146	49	7	6	12
Fourth Degree	8	3	2	0	2	0
Fifth Degree	86	58	26	6	20	15
Other	9	0	5	0	0	0
Total	1,087	428	376	29	37	80

Drug Type by Drug Offense Degree (Percentages)

Degree	Meth	Crack	Cocaine	Heroin	Marijuana	Amphetamine
First Degree	57.1	19.6	43.1	20.7	10.8	48.8
Second Degree	25.9	32.0	35.1	34.5	13.5	17.5
Third Degree	7.5	34.1	13.0	24.1	16.2	15.0
Fourth Degree	0.7	0.7	0.5	0.0	5.4	0.0
Fifth Degree	7.9	13.6	6.9	20.7	54.1	18.7
Other	0.9	0.0	1.4	0.0	0.0	0.0
Total	1,087	428	376	29	37	80

Note: All percentages are column percentages

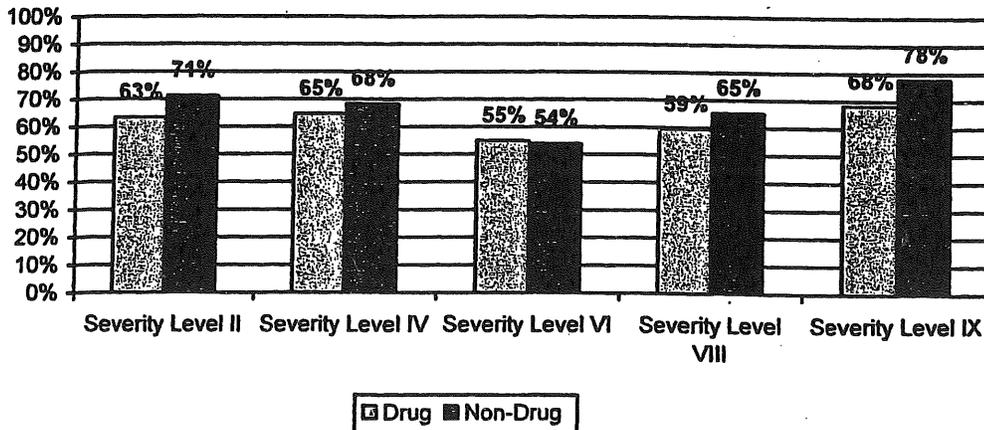
Table 11. Severity Level Rankings for Various Minnesota Felony Offenses

Severity Level IX	Severity Level VIII	Severity Level VI
1 st Degree Drug Offense	2 nd Degree Drug Offense	3 rd Degree Drug Offense
3 rd Degree Murder	Manslaughter	2 nd & 4 th Degree Sex Offenses
1 st Degree Manslaughter	Crim. Vehicular Homicide	2 nd Degree Assault
1 st Degree Sex Offense	2 nd & 3 rd Degree Sex Offenses	2 nd Degree Agg. Robbery
1 st Degree Assault	1 st Degree Agg. Robbery	Kidnapping
Kidnapping (great bodily harm)	Burglary (Assault or Weapon)	Burglary (Occupied Dwelling)
	Drive-By Shooting	Theft Over \$35,000
	1 st Degree Arson	
	Kidnapping (unsafe release or victim under 16)	
Severity Level IV	Severity Level II	
4 th Degree Drug Offense	5 th Degree Drug Offense	
3 rd & 5 th Degree Assault	Theft Related Offenses (\$501-2500)	
Domestic Assault	Damage to Property	
Terroristic Threats		
Harassment/Stalking		
Burglary		
Theft (from Person, of MV, of Firearm)		

Sentencing Practices

Data on actual sentencing practices reveals that drug offenders, particularly upper level drug offenders, are receiving sentences significantly different than other offenders at the same severity level. Figure 38 shows the imprisonment rates for drug and other offenders at the same severity level that are recommended an executed prison sentence under the sentencing guidelines.

Figure 38. Imprisonment Rates for Drug and Non-Drug Offenders Recommended an Executed Prison Sentence



Appendix A:

SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (intentional murder, drive-by-shootings)</i>	XI	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree (unintentional murder)</i>	X	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree</i> ² <i>Assault, 1st Degree</i>	IX	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2nd Degree (c),(d),(e),(f),(h)</i> ²	VIII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Felony DWI</i>	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i>	VI	21	27	33	39 37-41	45 43-47	51 49-53	57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 31-35	38 36-40	43 41-45	48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 23-25	27 26-28	30 29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	21 20-22	23 22-24
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. Mandatory Sentences for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

¹ One year and one day
² Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

Appendix D: Controlled Substance Crimes: Acts and Amounts

Controlled Substance Offenses Occurring On or After January 1, 2004

Severity Level IX: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 10 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 200 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana or
25 kilos or more Marij. in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 25 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 500 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 500 grams or 500 or more dosage units PCP/Hallucinogen
- (4) 100 kilograms or more Marijuana

Manufacture (Subd. 2a(a))

Manufacture ANY amount of Methamphetamine

Severity Level VIII: Second Degree Controlled Substance Crime (MN. Stat. § 152.022)

Sale/Possession With Intent: Aggregated Over 90 Day Period (subd. 1)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 10 grams or 50 or more dosage units PCP/Hallucinogen
- (4) 25 kilograms or more Marijuana
- (5) Cocaine/Narcotic to minor or employs minor
- (6) Any of the Following in Zone or Drug Treatment Facility:
 - (i) Schedule I & II Narcotics or LSD
 - (ii) Methamphetamine/Amphetamine
 - (iii) 5 kilograms or more Marijuana

Possession (subd. 2)

- (1) 6 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 50 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 grams or 100 or more dosage units PCP/Hallucinogen
- (4) 50 kilograms or more Marijuana

Severity Level VI: Third Degree Controlled Substance Crime (MN. Stat. § 152.023)

Sale/Possession With Intent (subd. 1)

- (1) A Narcotic Drug (Including Cocaine and Heroin)
- (2) 10 or more dosage units of Hallucinogen/PCP
- (3) Schedule I,II,III to minor - Not Narcotics
- (4) Schedule I,II,III employs minor - Not Narcotics
- (5) 5 kilograms Marijuana

Possession (subd. 2)

- (1) 3 or more grams Cocaine, Heroin, or Methamphetamine
- (2) 10 or more grams Narcotic other than Cocaine, Heroin, or Methamphetamine
- (3) 50 or more dosage units of Narcotics
- (4) Sch. I & II Narc./5 or more d.u. LSD in Zone or Drug Treatment Facility
- (5) 10 kilograms Marijuana
- (6) Methamphetamine/Amphetamine in Zone or Drug Treatment Facility

Severity Level IV: Fourth Degree Controlled Substance Crime (MN. Stat. § 152.024)

Sale/Possession With Intent (subd. 1)

- (1) Schedule I,II,III (except Marijuana)
- (2) Schedule IV or V to minor
- (3) Employs minor to sell schedule IV or V
- (4) Marijuana in Zone or Drug Treatment Facility

Possession (subd. 2)

- (1) 10 or more dosage units of Hallucinogen/PCP
- (2) Schedule I,II,III (except Marij.) w/ intent to sell

Severity Level III: First Degree Controlled Substance Crime (MN. Stat. § 152.021)

Attempted Manufacture of Methamphetamine (subd. 2a(b))

- (1) Possession of Precursor Chemicals with Intent to Manufacture Methamphetamine

Severity Level II: Fifth Degree Controlled Substance Crime (MN. Stat. § 152.025)

Sale/Possession With Intent (subd. 1)

- (1) Marijuana
- (2) Schedule IV

Possession (subd. 2)

- (1) Possession of Schedule I,II,III,IV - Includes Marijuana
Also Includes: Crack/Cocaine/Narc./PCP/Halluc.
- (2) Procurement by fraud

Severity Level I: Sale of Simulated Controlled Substance (MN. Stat. § 152.097)

Sale

- (1) Sale of ANY amount of a simulated controlled substance

Table 12. Minnesota Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

	Stat. Max.	Sale Thresholds	Possession Thresholds
First Degree	30 years	10 grams or more	25 grams or more
Second Degree	25 years	3 grams – 10 grams	6 grams – 25 grams
Third Degree	20 years	Less than 3 grams	3 grams – 6 grams
Fourth Degree	15 years	---	---
Fifth Degree	5 years	---	Less than 3 grams

Minnesota is the only state among upper midwest comparative states that separates a manufacture offense from sale or distribution offenses. Under Minnesota statute, the manufacture of any amount of methamphetamine is classified as a first degree offense.

Illinois

Illinois separates drug offenses based on the amount of drug involved and uses the same threshold amounts for powder cocaine, crack cocaine, and methamphetamine. Table 13 breaks down Illinois' drug offenses involving these drugs. Possession with intent to deliver offenses are treated as sale/manufacture offenses under Illinois' drug sentencing provisions.

Table 13. Illinois Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds	Possession Thresholds
60 years	900 grams or more	---
50 years	400 grams – 900 grams	900 grams or more
40 years	100 grams – 400 grams	400 grams – 900 grams
30 years	15 grams – 100 grams	100 grams – 400 grams
15 years	1 gram – 15 grams	15 grams – 100 grams
7 years	Less than 1 gram	---
3 years	---	Less than 15 grams

Iowa

Iowa has three separate sale/manufacture offenses separated by the amount of drug involved in the offense. Separate threshold amounts are established for powder cocaine, crack cocaine, and methamphetamine. Simple possession of any amount of these three drugs is a non-felony offense with a statutory maximum sentence of one year in jail. Possession with intent to deliver offenses are treated as sale/manufacture offenses. Table 14 breaks down Iowa's drug offenses involving powder cocaine, crack cocaine, and methamphetamine.

Table 14. Iowa Sale/Manufacture Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds		
	Powder Cocaine	Crack Cocaine	Methamphetamine
50 years	More than 5,000 grams	More than 50 grams	More than 5,000 grams
25 years	500 grams – 5,000 grams	5 grams – 50 grams	5 grams – 5,000 grams
10 years	500 grams or Less	5 grams or Less	5 grams or Less

Michigan

Michigan separates offenses based on the amount of drug involved and uses the same threshold amounts for powder cocaine and crack cocaine. However, no threshold amounts are established for offenses involving methamphetamine; the sale or manufacture of any amount of methamphetamine carries a statutory maximum sentence of 20 years while the possession of any amount of methamphetamine carries a maximum sentence of 10 years. Table 15 breaks down Michigan's drug offenses involving these drugs. Possession with intent to deliver offenses are treated as sale/manufacture offenses under Michigan's drug sentencing provisions.

Table 15. Michigan Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds: Powder and Crack Cocaine	Possession Thresholds: Powder and Crack Cocaine
Life	1,000 grams or More	1,000 grams or More
30 years	450 grams – 1,000 grams	450 grams – 1,000 grams
20 years	Less than 450 grams	50 grams – 450 grams
4 years	---	Less than 50 grams
Stat. Max.	Sale/Manufacture Thresholds: Methamphetamine	Possession Thresholds: Methamphetamine
20 years	Any Amount	---
10 years	---	Any Amount

Michigan drug offense provisions separate an additional offense at the bottom end of both sale/manufacture and possession offenses involving powder and crack cocaine. Sale/Manufacture of 50 grams through 450 grams and sale/manufacture of less than 50 grams are defined as separate offenses, but both have the same 20-year statutory maximum sentence. Similarly, possession of 25 grams through 50 grams and possession of less than 25 grams have the same 4-year statutory maximum sentence.

North Dakota

In North Dakota, powder cocaine and methamphetamine are treated equally, while crack cocaine has a lower threshold amount. Drug categories have only one threshold for sale/manufacture and possession. Table 16 breaks down North Dakota's drug offenses involving these drugs. Possession with intent to deliver offenses are treated the same as sale/manufacture offenses.

Table 16. North Dakota Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds: Powder Cocaine and Methamphetamine	Possession Thresholds: Powder Cocaine and Methamphetamine
Life	50 grams or More	---
20 years	Less than 50 grams	---
10 years	---	50 grams or More
5 years	---	Less than 50 grams
Stat. Max.	Sale/Manufacture Thresholds: Crack Cocaine	Possession Thresholds: Crack Cocaine
Life	5 grams or More	---
20 years	Less than 5 grams	---
10 years	---	5 grams or More
5 years	---	Less than 5 grams



South Dakota

South Dakota's drug offense provisions include only one offense that encompasses sale, manufacture, possession, and possession with intent to deliver; powder cocaine, crack cocaine, and methamphetamine are all included in this offense, which has a statutory maximum sentence of 10 years.

Wisconsin

Wisconsin utilizes an amount-based system for its sale/manufacture of drug offenses. Powder and crack cocaine are treated equally while methamphetamine has separate threshold amounts. Like Iowa, simple possession of any amount of these three drugs is a non-felony offense with a statutory maximum sentence of one year in jail. Possession with intent to deliver offenses are treated the same as sale/manufacture offenses. Table 17 breaks down Wisconsin's drug offenses involving powder cocaine, crack cocaine, and methamphetamine.

Table 17. Wisconsin Sale/Manufacture Drug Offenses for Powder Cocaine, Crack Cocaine, and Methamphetamine

Stat. Max.	Sale/Manufacture Thresholds	
	Powder and Crack Cocaine	Methamphetamine
40 years	More than 40 grams	More than 50 grams
25 years	15 grams – 40 grams	10 grams – 50 grams
15 years	5 grams – 15 grams	3 grams – 10 grams
12.5 years	1 gram – 5 grams	3 grams or Less
10 years	1 gram or Less	---

In comparing Minnesota drug offenses to those in other upper midwestern states, a couple of differences seem striking. Minnesota is the only state in the region that treats the manufacture of a drug differently than the sale of that drug. Additionally, Michigan and Minnesota are the only regional states that disregard their amount-based sentencing structure for a methamphetamine-related offense (Minnesota for manufacture only and Michigan for all methamphetamine offenses). While Michigan provides for a statutory maximum sentence equal to the lowest level sale/manufacture provisions for these offenses, Minnesota equates them to the highest.

There also appear to be significant differences between Minnesota and other upper midwestern states in the threshold amounts used to distinguish drug offenses. While other regional states that use amount-based drug structures have their top-level thresholds between 40 grams in Wisconsin and 5,000 grams in Iowa, Minnesota's first degree threshold is 10 grams for sale offenses and 25 grams for possession offenses. For all offenses with comparable statutory maximum sentences, Minnesota has the lowest thresholds amounts (most severe provisions) of any state in the upper midwest.

Minnesota in Relation to Other Sentencing Guidelines States

Comparing drug offense sentencing provisions among states that utilize sentencing guidelines offers greater insight into sentencing practices among various states. There are three types of sentencing guidelines structures. The first type involves mandatory guidelines where judges are required to pronounce the presumptive sentence or a sentence within the range called for by the guidelines. The second type is voluntary, where the guidelines recommend a sentence, but judges are not bound to the recommendation and are completely free to pronounce any sentence within the statutory limits for the offense. Finally, Minnesota and many other states utilize sentencing guidelines that lie between these two extremes. In Minnesota, the judge may depart from the guidelines' presumptive sentence only when "substantial and compelling reasons" exist to justify the departure.

Finally, the rural counties are facing a significant increase in the number of drug cases due to methamphetamine growth in the state. The increase in caseloads, combined with limited treatment resources (which can impact waiting periods for entry into treatment), places rural counties in a very volatile situation.

Cost of Drug Treatment for Offenders in Minnesota

Given that centralized data for the cost of community-based drug treatment for offenders is not readily available, a suitable alternative was explored. Information was obtained from the Minnesota Department of Human Services' Consolidated Chemical Dependency Treatment Fund for the time period July 1, 2002 through June 30, 2003 to calculate a cost to treat drug offenders.

The data contained in the Consolidated Chemical Dependency fund covers all individuals receiving drug treatment, not just offenders. However, the types of programs and costs associated with the various levels of drug treatment can serve as an estimate for projecting what drug treatment would cost for offenders.

Statewide, 25,765 individuals received drug treatment through the Consolidated Chemical Dependency fund. Treatment was broken down into several modalities, with a total amount and an average cost per treatment modality. A brief summary of expenditures is shown below in Table 23:

**Table 23. Minnesota Consolidated Chemical Dependency Treatment Fund
 Total Amount and Average Cost**

Treatment Type	# Patients	# Days	# Hours	Total Amount	Average Cost	Avg. Cost Per Unit
Hospital Inpatient	993	9,776	N/A	\$2,540,043.50	\$3,820	\$260
Primary Inpatient	4,481	90,073	N/A	\$20,059,141.00	\$5,159	\$223
Primary Outpatient	11,792	N/a	501,444	\$13,823,347.90	\$1,563	\$28
Methadone	1,094	N/a	125,936	\$1,340,536.01	\$1,322	\$11
Extended Care	2,416	91,767	N/A	\$13,292,224.03	\$6,548	\$145
Half Way House	4,760	210,908	N/A	\$14,973,198.14	\$3,677	\$71
Housing	229	6,310	N/A	\$464,344.10	\$2,537	\$74
Total	25,765	408,834	627,380	\$66,492,834.68		

Based on the treatment cost information provided, it is projected that the average cost of treatment per offender would range between \$1,600 and \$6,600 per year. If those figures are averaged, the estimated cost of treatment for the average drug offender calculates to be approximately \$4,100 per year. This figure is very comparable to the cost figure of \$4,300 per offender that was identified in a federal study conducted in the late 1990s²⁸.

It should be noted that numerous assumptions were made in determining the projected treatment costs for a drug offender in Minnesota. This figure is intended to represent an estimate only and it should not solely serve as the basis for any policy decision. More detailed research would need to be completed to establish a firm treatment cost. Given the timeline for the submission of this report and the limited resources of the sentencing guidelines commission, this figure represents the best estimate that could be made at this time.

²⁸ "Tight Budget May Impair Rehab Program," Los Angeles Times, April 7, 2003.

Table 25. Distribution of Imprisoned Non-Violent Offenders by Drug Degree

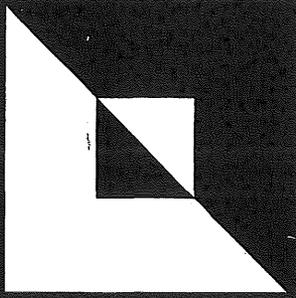
Drug Degree	Total # Drug Offenders	Total # Drug Offenders with Prison Sentences	# Non-Violent Offenders with Prison Sentences: Current and Prior 1st and 2nd Deg. Considered Violent	# Non-Violent Offenders with Prison Sentences: Current and Prior 1st and 2nd Deg. Considered Non-Violent
1	480	328	—	166
2	367	218	—	165
3	515	137	73	86
4	146	25	13	17
5	1,869	227	116	141
Sale simulated	47	3	1	1
Total	3,424	938	203	576

Total Fiscal Impact of a Diversion Program

The subcommittee placed great importance on stressing that resources are not currently available at the local and county level to accommodate a policy that would shift offenders from state prison to county responsibility. Given the current fragmentation of treatment programs and lack of a continuum of treatment statewide, treatment options would need to be expanded and adequately funded to not compromise public safety with this type of policy change. Presented below in Table 26 is a rough projected fiscal impact to the state if non-violent drug offenders were diverted from prison and the state assumes the cost of treatment at \$4,100 per offender.

Table 26. Fiscal Impact of Diverting Drug Offenders and Factoring in Drug Treatment Costs

Scenario	Number Non-Violent Offenders Receiving Prison Sentences	Estimated Prison Beds Required	Prison Savings (Number of Beds x Per Diem of \$59.79 x 365)	Treatment Costs (# Offenders Diverted X Avg. Cost of Treatment of \$4,100)	Projected Fiscal Impact to State
Category One: 1st and 2nd Degree Considered Violent	203	240	\$5,237,604.00	\$832,300.00	\$4,405,304.00
I (2%+2% reductions)	195	230	\$5,019,371.00	\$799,500.00	\$4,219,871.00
II (5%+5% reductions)	183	216	\$6,348,197.00	\$750,300.00	\$5,597,897.00
III (10%+10% reductions)	162	192	\$4,713,844.00	\$664,200.00	\$4,049,644.00
Category Two: 1st and 2nd Degree Considered Non-Violent	576	1,521	\$33,193,315.00	\$2,361,600.00	\$30,831,715.00
IV (2%+2% reductions)	553	1,460	\$31,862,091.00	\$2,267,300.00	\$29,594,791.00
V (5%+5% reductions)	518	1,369	\$29,876,166.00	\$2,123,800.00	\$27,752,366.00
VI (10%+10% reductions)	461	1,217	\$26,559,016.00	\$1,890,100.00	\$24,668,916.00



Report to the Legislature on Drug Offender Sentencing Issues

January 15, 2004

Minnesota Sentencing Guidelines Commission



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Summary and Conclusion

The data analysis and research findings presented in this report provide a fairly comprehensive examination of drug sentencing patterns in Minnesota. The report contains historical, comparative, and proportionality issues related to sentencing of drug offenders, as well as current trend data. This multi-dimensional approach permits a better understanding of the complexity of issues surrounding the development of appropriate sentencing policy for drug offenders. Given the time constraints and the resources of the sentencing guidelines commission, the request for a recidivism study for drug offenders is not included in this report. A study of that nature is very complex and not quickly completed. The commission can complete this request with adequate time and resources allocated by the legislature.

From the information contained in this report, it is apparent that more drug offenders are being admitted to state correctional facilities and serving longer sentences in those same facilities than ever before in the history of Minnesota. There is no single factor responsible for this finding, but rather a combination of factors interacting with each other. The development of sentencing policy frequently results in a mixture of intended and unintended consequences. It would appear that issues surrounding current sentencing practices for drug offenders are, in fact, a combination of those intended and unintended consequences.

The increase in the number of drug offenders admitted to prison is related to several of the statutory changes to the state's drug laws since the enactment of the sentencing guidelines in 1980. Statutory changes in 1986 and 1987 resulted in presumptive prison sentences for offenders with no criminal history for sale of specified amounts of drugs and set different threshold levels with more severe penalties for powder and crack cocaine sales, impacting prison admissions.

One of the most significant statutory changes impacting admissions occurred in 1989, when the controlled substance statutory scheme was drastically altered, creating five degrees of drug offenses. The lengthy statutory maximums for some degrees guided the commission in ranking those offenses. The commission wanted to maintain the existing ranking for street level drug sales, but rank more serious drug crimes higher, since the understanding was that first degree drug offenders were to represent major, or kingpin, drug dealers. Due to the limitations of the existing grid, first degree offenses were ranked at Severity Level VIII.

When the *State v. Russell* decision was decided by the Minnesota Supreme Court, focusing on the disparity in sentencing between the thresholds for powder cocaine and crack, the legislature decreased the amount thresholds for powder cocaine to equal those established for crack cocaine and possession with intent to sell was also added back into the definition of a sale offense. The legislative action of lowering the threshold of other drugs to equal those of crack cocaine had the consequence of increasing the sentence severity for numerous drug offenses without the commission taking any action. Periodically, legislative modifications that affect presumptive sentences appear to be in conflict with the principles of proportionality and rationality that serves as the basis for the sentencing guidelines.

Admissions to prison have also been impacted by the high percentage of probation violators admitted due to violations of their community-based supervision, in many instances representing more admissions than direct commits to prison. As communities experience higher supervision caseloads and declining resources, both the quantity and quality of programs and services available to offenders are affected, which contributes to higher revocation rates and use of more limited state resources.

The impact of the growth in methamphetamine cases has also had a direct impact on prison admissions. In recent years, the number of offenders admitted to prison for methamphetamine has more than doubled and has had the greatest impact on rural and non-urban communities. The growth in drug offense admissions between 2001 and 2002 clearly reflects the impact of this one drug offense.



When legislative changes are combined with increased revocation rates, the escalating impact of methamphetamine convictions, and growth in overall number of drug offenses, the result is a continual increase in the number of drug offenders admitted to prison that is not likely to level off in the near future without sentencing policy changes.

In addition to more drug offenders being admitted to prison, the findings contained in the report reveal that the sentences imposed for this increased number of prison admissions are significantly longer. With the establishment of the five drug degrees and the subsequent rankings on the sentencing guidelines grid, sentences for many drug offenses were lengthened. The average pronounced drug sentence has increased from 22.9 months in 1988 to 50.2 months in 2002. With the average drug sentence length more than doubling, the impact on prison beds required to incarcerate this offender group is significant.

More drug offenses have come to be classified as first degree drug offenses through lower thresholds for sale and possession and the addition of the manufacture of methamphetamine. These offenses have a presumptive prison sentence of 86 months for an offender with no criminal history and have contributed to the issue of increased sentence lengths, especially with the increased number of convictions for manufacture of methamphetamine.

In reviewing surrounding midwestern states and other sentencing guidelines states, Minnesota's maximum sentences by various thresholds appear to be disproportionate to those in other states. These lengthy sentences have a direct impact on the number of drug offenders represented in the state's prison population.

The impact of drug offenders in state correctional facilities is somewhat negated by the high number of mitigated durational and dispositional departures. The impact of departures is most apparent with first degree drug offenses for which the mitigated departure rate is in excess of 60%, meaning that only slightly more than one-third of what are intended to represent the most serious drug offenders are actually receiving the presumptive sentence. This finding could indicate that the current drug statutes may not adequately identify the most serious drug offender or distinguish adequately between the more serious and less serious drug offender.

Research contained in this report also indicates that Minnesota has one of the highest mitigated (or downward) departure rates for drug offenses of all guideline states examined. If the departure rate was lower and the recommended presumptive sentences were imposed, the impact of drug offenders on the correctional system would be enormous. The high departure rates do raise issues as to whether there is widespread disagreement among the various criminal justice practitioners that the presumptive sentences are appropriate.

The only way to alter the current impact that drug offenders are having on the department of corrections prison population is to decrease admissions or increase releases, neither of which are likely to occur under the current sentencing scheme. Any change in current policy would result in cost shifts from the state to local correctional agencies. Given the increased number of drug offender admissions to prison, the longer presumptive sentences, and the high number of mitigated departures, the following options are offered by the sentencing guidelines commission for consideration by the legislature.

Options for Consideration

1. Continue to sentence drug offenders under the state's current sentencing policy. If this option is chosen then additional appropriations will be necessary to fund the number of additional prison beds required for the projected growth in this specific offender population. It would also be necessary to fund additional expansion of current institutional based drug treatment programs to accommodate the projected growth in the number of drug offenders admitted to state prisons.
2. The second option for consideration would be for the legislature to revisit the threshold amounts for various drugs that were modified in 1989 and either reinstate the previous



powder thresholds for all narcotics or establish new thresholds that would increase or modify, in some manner, the current drug thresholds. This modification would impact both the number of drug offenders admitted to prison, as well as, the length of presumptive sentences depending on the manner in which the thresholds were modified.

3. Another option for consideration by the legislature would include reviewing the current ranking of drug offenses. If the statutory maximums for first and second degree drug offenses were modified or re-adjusted, the severity level rankings could be adjusted accordingly and proportionality maintained under the guidelines. Since establishing the five drug degrees in 1989, an additional severity level has been added to the sentencing grid and reassignment of some offenses to different severity levels may be warranted at this time.
4. A fourth option would be to develop, implement, and adequately fund an infrastructure of community based punishment and treatments programs targeting drug offenders to address the growing number of probation revocations and supervised release returnees. This specific offender group has very complex and multiple needs that must be addressed if the offender is to remain under community supervision. There would be costs associated with developing a comprehensive continuum of drug treatment programs and implementing community punishment options that focus on offender accountability. However, these costs would be less per offender than the annual cost to incarceration an offender in a state correctional facility.
5. Develop a comprehensive sentencing policy targeted at drug offenders. The policy should be guided by the need to protect public safety, hold the offender accountable for his/her illegal behavior and provide a meaningful opportunity for the offender to address his/her substance abuse problem and drug related behavior. A comprehensive drug sentencing policy should clearly identify those drug offenders who pose the greatest threat to the community and ensure the availability of prison beds for a period of incarceration set forth under the policy. In addition, proposed changes in sentencing policy must recognize the significant fiscal impact on local communities that can result from shifting offenders currently under state supervision to supervision at the local level and ensuring adequate funding is appropriated.

The sentencing guidelines commission respectfully submits this report for your consideration and review. Please do not hesitate to contact the commission if there are any questions or a need for additional clarification on data or findings presented in this report.