LEGISLATIVE WORKING GROUP ON CONTROLLED SUBSTANCES

REPORT TO THE LEGISLATURE

January 2009

Members

Thomas H. Pertler, Chair, Carlton County Attorney
Mike Freeman, Hennepin County Attorney
John Stuart, State Public Defender
Brock Hunter, Minnesota Association of Criminal Defense Lawyers
Lt. David McLaughlin, Stearns County Sheriff's Office
Chief Jim Crace, Benson Police Department
Paul Ford, St. Paul Police Department
The Honorable Tom Neuville, Rice County
The Honorable Toddrick Barnette, Hennepin County
Tom Adkins, Washington County Corrections
Carol Falkowski, Director of the DHS Chemical Health Division
Dan Cain, President of RS Eden
The Honorable Pam Alexander, Executive Director, Council on Crime & Justice
Melvin Carter, Jr., Retired St. Paul Police Sergeant & Co-Founder of Save Our Sons
Phil Cohen, Citizen Member
Melanie Majors, Executive Director, Longfellow Community Council
Paul Hetland, City Clerk, City of Freeport

Ex-Officio Member

Senator Bill Ingebrigtsen

Staff

The Honorable Isabel Gomez*, Executive Director, Minnesota Sentencing Guidelines Commission

Alice Seuffert, Committee Administrator, Public Safety Budget Division, Minnesota Senate

Melanie A. LaComb**, Committee Administrator, Public Safety Finance Division Committee, Minnesota House of Representatives

**The Honorable Isabel Gomez retired during the tenure of the Legislative Working Group and Anne Wall, Senior Research Analyst from the Sentencing Guidelines Commission provided essential research and information to the Working Group upon Judge Gomez's retirement.*

***Melanie A. LaComb has since changed her name to Melanie A. McMahon and is still Committee Administrator with the Minnesota House of Representatives.*

Table of Contents

Page

Executive Summary

The 2008 Legislature created the Working Group on Controlled Substances to study Minnesota's controlled substance laws and make recommendations to the legislature regarding threshold amounts for controlled substance crimes, the establishment of a separate sentencing guidelines grid, additional aggravating factors to target dangerous offenders, revising criminal history calculations, maximizing the use of deferred prosecutions, and increasing the use of early prison release programs for nonviolent controlled substance offenders who complete drug treatment while in prison.

The Working Group was comprised of representatives from law enforcement, county attorneys, defense attorneys, corrections, courts, treatment professionals, sentencing experts, and community members. The Working Group met eight times and received testimony and input from each of the represented groups. In addition, the Working Group welcomed input from any other interested parties and received testimony and letters from a wide variety of stakeholders.

The Working Group acknowledged that its scope of inquiry was necessarily limited and that there are many areas related to controlled substances that could not be addressed. Nevertheless, the Working Group did make recommendations as to each of the six legislatively mandated topics as follows:

RECOMMENDATIONS

Modify Threshold Amounts: There were three proposals made to change the controlled substance thresholds. After intense discussion, the Working Group recommended a number of changes that it felt were consistent with public safety including the creation of a "marijuana grow" statute, reductions in the marijuana thresholds, and responsible increases in some of the cocaine, methamphetamine, and heroin thresholds. (Charts Attached)

No Separate Sentencing Grid: The Working Group recommended that there should not be a separate sentencing guidelines grid for controlled substances since it would be confusing and unnecessary.

No Additional Aggravating Factors: While there were proposals that would have created a "Kingpin" classification, there were widely divergent views as to how that classification should be defined. The Working Group was unable to reach a consensus as to additional aggravating factors.

Maintain Current Criminal History Score Calculations: Currently, the number of "points" an offender is assigned for a prior conviction under the sentencing guidelines is determined by the severity level of the prior crime. This was not viewed as a high priority by the Working Group and therefore there was no recommended change to existing law.

Maintain Current Use of Deferred Prosecutions Under Minn. Stat. § 152.18: There was a proposal to make the use of deferred prosecutions under 152.18 presumptive based upon a belief that they were not granted uniformly throughout the state. However, the Working Group ultimately rejected the proposal to make deferrals presumptive because data showed that such deferrals are being used throughout the state and many members felt that local judges and prosecutors should have the discretion to grant or deny such deferred prosecutions.

Increase Early Release For Nonviolent Drug Offenders Who Complete Treatment: The Working Group unanimously recommended the increased use of early prison release for nonviolent drug offenders who complete treatment in prison. The Working Group made specific recommendations for ways to expand the pool of inmates who would be eligible to participate. The Working Group also recommended that any savings from the early release of prisoners or the changes to the drug thresholds should be used to fund additional prison chemical dependency treatment and to fund local corrections programs.

MARIJUANA GROW Proposals Chart

Severity Level	Law Enforcement	"Third"	**WORKING GROUP FINAL**
1st Degree - Level 9 (86 mos)	100 plants	100 plants	**100 plants**
2nd Degree- Level 8 (48 mos)	50 plants	50 plants	**50 plants**
3rd Degree-Level 6 (21 mos Stayed)	10 plants	26 plants	**25 plants**
5th Degree-Level 3 (1yr+day stay)	5 plants	11 plants	**10 plants**
Gross Misdemeanor	None	1 plant	**None**

MARIJUANA THRESHOLD Proposals Chart

Severity Level	**Present**	Law Enforcement	"Third"	**WORKING GROUP FINAL**
1st Degree - Level 9 (86 mos)	Possession: **100 kilos** Sale: **50 kilos**	Possession: 3 kilos Sale: 1.5 kilos	Possession: 50 kilos Sale: No proposal	Possession: **25 kilos** Sale: **12.5 kilos**
2nd Degree-Level 8 (48 mos)	Possession: **50 kilos** Sale: **25 kilos**	Possession: 500g Sale: 250g	Possession: 25 kilos Sale: No proposal	Possession: **12.5 kilos** Sale: **6 kilos**
3rd Degree-Level 6 (21 mos Stayed)	Possession: **10 kilos** Sale: **5 kilos**	Possession: 250g Sale: 125 g	Possession: No proposal Sale: No proposal	Possession: **1 kilos** Sale: **500 grams**
5th Degree-Level 3 (1yr+day stay)	Possession: **42.5g+** Sale: N/A	Possession: **42.5g +**	No proposal	Possession: **42.5g +**
Misdemeanor	**NONE**			Possession: **14g +**
Petty Misdemeanor	**42.5 grams or less**			Possession: **trace up to 14g**

Cocaine/Meth/Heroin Threshold Proposals Chart

Severity Level	**Present**	Law Enforcement	Defense	"Third"	**WORKING GROUP FINAL**
1st Degree - Level 9 (86 mos)	Possession: **25g** Sale: 10g	Possession: 35g Sale: 10g	Possession: 250g or 25g + 2 factors Sale: 50g or 10g + 2 factors or any manuf./sale meth	Possession: 100g or 25g + 2 factors Sale: 40g or 10g + 2 factors	Possession: **35g** Sale: 10g
2nd Degree- Level 8 (48 mos)	Possession: **6g** Sale: **3g**	Possession: 10g Sale: 3g	Possession: 25g or 6g + 2 factors Sale: 10g or 3g + 2 factors	Possession: 25g or 6g + 2 factors Sale: 10g or 3g + 2 factors	Possession: **10g** Sale: **5g**
3rd Degree- Level 6 (21 mos Stayed)	Possession: 3g Sale: Any	Possession: 3g Sale: Any	Possession: 6g (2 X current) Sale: 3g	Possession: 6g (2 X current) Sale: Any	Possession: 3g Sale: Any
5th Degree- Level 3 (1yr+day stay)	Possession: Any Sale: N/A	Possession: Any Sale: N/A	Possession: add petty misd. for trace	Add misdemeanor for trace	Possession: Any Sale: N/A

Introduction

The 2008 Legislature created the formation of a Legislative Working Group on Controlled Substances to study the controlled substance statutes and make recommendations and conclusions to the 2009 Legislature for suggested changes in six mandatory areas of inquiry and numerous other optional areas for consideration. The Working Group was appointed by the Speaker of the House, Margaret Anderson Kelliher and Senate Majority Leader, Lawrence J. Pogemiller in August of 2008. Thereafter the first meeting of the Working Group was on Friday, August 22, 2008. The final report of the Working Group is due Friday, January 16, 2009 (See, Appendix A: Legislative Mandate to Commission).

The Working Group met on eight dates (See, Appendix B: Minutes of Legislative Working Group on Controlled Substances) and during the course of those meetings took extensive testimony and informative research from various experts in their field, Legislative staff members, community members, and from the members themselves.

During the course of the scheduled meetings a broad spectrum of research information and suggestions was received from experts in their respective field. The Working Group weighed and considered voluminous data before finally recommending the suggested proposals for Legislative changes contained herein with respect to those six mandatory Legislative reporting criteria.

Legislative Mission

Contained in the enabling Legislation from 2008 were six directives that the Working Group considered in it's final report. (Appendix A). Also contained in the Legislation were numerous other optional areas for discussion that the Working Group did discuss in part as those items were necessarily either a part of or incorporated into one or more of the six mandatory areas for consideration. Id.

For purposes of this Report to the Legislation, however, the Working Group spent a considerable amount of time discussing and considering those six mandatory criteria and make findings and recommendations to the Legislature in those six areas.

The Working Group also acknowledged and will do so again in this Report, that there was neither the time nor the resources available to address many important and related areas of concern that are associated with the controlled substance laws of the State of Minnesota and all related programs and services that are necessarily intertwined with the controlled substance laws of this State.

The Six Mandatory Areas of Discussion

1. **Establishing a Separate Sentencing Grid:**

From the very onset of the first meeting on August 22, 2008, Judge Isabel Gomez addressed the Working Group as the Executive Director for the Minnesota Sentencing Guidelines Commission. In that capacity she suggested this Working Group was not the appropriate entity to formulate a new and separate sentenced grid. Members of the Working Group familiar with the Minnesota Sentencing Guidelines agreed and early on a preliminary consensus developed that this Working Group was not in favor of recommending a separate sentencing grid for controlled substance violations.

Judge Gomez presented at length to the Working Group on the present status of the current Sentencing Guidelines and the practical impact of sentences for controlled substance violators across the State of Minnesota as

they pertain to departure rates from the Sentencing Guidelines. The majority of the Working Group realized that any suggestions for changes to the present controlled substance statutes could be accommodated without the establishment of a separate sentencing grid.

Furthermore, it was the Working Group's position that for purposes of consistency and application of sentencing provisions throughout the State, it was in the best interest of effective administration of justice that any recommendations or changes to the controlled substance statutes remain within the current framework of the sentencing grid rather than attempt to create another new sentencing grid specifically designated for controlled substance violations.

2**. <u>Establishing Aggravating Factors for Enhanced Crimes</u>:**

Much discussion was had and data presented at the first five meetings regarding the prospect of establishing aggravating factors for enhanced controlled substance crimes that may be applicable for the establishment of "kingpin" offenders. However, there was a diverse and spirited debate whether the establishment of a "kingpin" violator would be based upon threshold amounts alone or weights coupled with aggravating factors. Obviously, if the Working Group were to establish a "kingpin" violator that was based upon both weight and aggravating factors then consideration must be given to what, if any aggravating factors would be proposed.

Certain proposals were put before the Working Group that made suggestions for both weight amounts and aggravating factors. Initially, these proposal were referred to as the Law Enforcement Proposal, the Public Defender Proposal, and later in our discussions a third Proposal. (<u>See</u>, Appendix C, Initial Proposal Grid).

The possible aggravating factors were both discussed and considered but as the discussion and debate continued, it became increasingly difficult to form a consensus that would both acknowledge an agreed upon list of aggravating factors coupled with a consensus on weight of the controlled substance that would lead to the establishment of a "kingpin" violator. Furthermore, it was increasingly difficult to formulate a position that would incorporate a "kingpin" violator into the existing Sentencing Guidelines taking into account the present offenses that are already currently ranked as Level IX Severity Offenses.

Ultimately the Working Group realized that because of the limited amount of time and diversity of views regarding some of the other six mandatory areas of discussion, it became clear that the Working Group desired to form a consensus on other areas of consideration that could adequately address the most severe controlled substance violations without having to establish a "kingpin" violator. Prior to the January 9th meeting there were three proposals for threshold modification. All three proposals made reference to a "kingpin" violator. In the proposal that was ultimately adopted on that date, the author withdrew the "kingpin" reference based upon increased bed space implications.

3. Revised Criminal History Score for Repeat Offenders:

The Working Group concluded that because there would be no recommendation for the establishment of a separate sentencing grid it likewise followed that a discussion on revising the criminal history score calculations for repeat drug offenders would not necessarily further the objectives of the Group.

The consensus of the Working Group was that our existing Sentencing Guidelines both adequately and effectively dealt with the enhancement of criminality for felony drug offenders that had prior criminal history points whether that history was from drug offenses or other felony offenses. The direction of the Working Group began to focus on substantive changes to existing statutory provisions regarding both threshold amounts and other sentencing provisions such as Minnesota Statutes § 152.18 authorizing stays of adjudication. Or perhaps consideration for increasing early release efforts for non-violent drug offenders as well as the primary discussion that related to an actual revision to the threshold amounts for the controlled substance offenses. It appeared unlikely that the Working Group was going to be able to spend the time and resources necessary to make a cogent recommendation for a revision of some sort to the criminal history score calculations.

Rather, it was the consensus of members present during the discussions that any suggestion or attempt to revise criminal history score calculations be addressed by a different committee or at a later point in time in order to conserve time and resources for the remaining four mentioned items of greater concern.

4. Maximizing Deferred Prosecutions for Statewide 152.18 Dispositions

As noted in number 3 above, the Working Group did spend a considerable amount of time discussing and debating deferred prosecutions pursuant to Minnesota Statutes § 152.18.

Members pointed out to the Working Group that there was some concern that the provisions of Minnesota Statutes § 152.18 were not being adopted or applied consistently throughout the entire State. The concern noted to the Working Group was that although 152.18 dispositions may be common in certain areas of the State it may not follow that other counties in greater Minnesota were routinely using the 152.18 disposition (See, Appendix D, 152.18 Statistics). However, other member comments suggested that some of the information contained in Appendix D may not be accurate in that there are certain counties that utilize 152.18 dispositions as confirmed by their county attorney despite the fact that Appendix D indicated the lack of any such dispositions.

Additional member comments made to the rest of the Working Group noted that the statutory language itself in Minnesota Statutes § 152.18 does not grant sole discretion of such a disposition to the county attorney in that jurisdiction. The language in that section provides that the Court may grant 152.18 disposition to a defendant who would qualify under that statute. Therefore, it was pointed out that in addition to the prosecutorial authority, the Court itself could grant the deferred prosecution which necessarily involved the discretionary processes of not just the county attorney but the bench as well.

A Motion was made to amend § 152.18 to provide that such a disposition would be presumptive rather than permissive. Some discussion was then had regarding what criteria the Court could rely upon in denying the presumptive nature of the 152.18 disposition rather than granting it if the statutes were to be amended. Although no specific criteria were proposed, the concept of a presumptive disposition was discussed and voted on.

Ultimately, the Working Group voted not to recommend a presumptive 152.18 disposition to those who were qualified under the statute but instead opted to recommend leaving the statute as is with its provisions

allowing the disposition in the individual counties throughout the State to be adopted and granted as the individual jurisdictions deem appropriate.

5. **Increasing Early Release for Non-Violent Offenders Who Complete Treatment:**

The Working Group received a copy of the March 2008 evaluation of the prison chemical dependency programs generally. That report concluded that participation in medium and long-term chemical dependency treatment at the Department of Corrections "significantly lowers offenders' recidivism risk, especially among those with a successful treatment outcome." program by the Department of Corrections. (See, Appendix E).

In 2005, the legislature passed Minn. Stat. § 244.055 that provided for the conditional release from prison of non-violent controlled substance offenders who have completed chemical dependency treatment. (See, Appendix F). The Working group received a 2008 report to the legislature regarding the Conditional Release Program established under Minn. Stat. § 244.055. The report showed that the number of offenders participating in the program were fewer than anticipated. (See, Appendix G). The report also contained an analysis conducted by the Council on Crime and Justice indicating that in order to increase the size of the Conditional Release Program, the selection criteria would need to be modified in several ways: (1) use a chemical dependency assessment at intake rather than the underlying drug offense to determine whether the offender is suffering from a drug addiction; (2) incorporate a validated risk assessment tool such as the Level of Service Inventory-Revised into the selection criteria to identify offenders who pose less of a public safety risk; and (3) examine whether chemically dependent offenders incarcerated for non-drug offenses should be admitted to the program.

Staff from the Department of Corrections answered questions from the Working Group regarding drug offenders in prison and indicated that the Department of Corrections also operates the Challenge Incarceration Program permitting early release for low-level offenders in prison and that program has a chemical dependency treatment component as well.

The Working Group was in favor of the expanded use of early release of non-violent offenders who completed chemical dependency treatment. The Working Group adopted a motion to expand the use of the DOC

Conditional Release Program by (1) removing the loss of prison time in § 244.055, subd. 6, (2) permitting offenders convicted of second and third degree sale of controlled substances to participate in the program, (3) use a chemical dependency assessment at intake rather than the underlying drug offense to determine whether the offender is suffering from a drug addiction with the caveat that offenders convicted of first degree sale would not be eligible; (4) incorporating a validated risk assessment tool such as the Level of Service Inventory-Revised into the selection criteria to identify offenders who pose less of a public safety risk; and (5) expanding the program to include chemically dependent offenders incarcerated for non-drug offenses provided that they meet all other criteria and are not a public safety risk.

It was critical to the Working Group that any savings from the early release of offenders as a result of expanding the Conditional Release Program, and from bed savings as a result of the proposed changes to controlled substance threshold amounts, should be directed to prison treatment and community corrections. As part of the expansion of the Conditional Release Program, the Working Group determined that half of any savings should be used to fund additional chemical dependency treatment within the Department of Corrections. Further, the Working Group determined that the other half of any savings should be distributed to local corrections departments to offset the costs of additional offenders that would be placed under community correction supervision. Because there are several different delivery systems for community corrections in the State of Minnesota, the Working Group was unable to make a recommendation as to the precise language that would be needed to facilitate the distribution to the various community corrections providers.

6. **Revising Threshold Amounts for Controlled Substance Crimes:**

The Working Group received input from a number of stakeholder groups regarding the threshold amounts for controlled substances. There was a wide range of concerns expressed. Some community members expressed concerns that controlled substance transactions and use were creating enormous livability concerns within neighborhoods. Other community members were concerned about people of color being over-represented in defendant populations.

The first proposal for changes to the controlled substance thresholds came from the law enforcement representatives on the Working Group.

(Law Enforcement Proposal, Michael Freeman, Lt. David McLaughlin, Chief Jim Crace, Officer Paul Ford, Thomas H. Pertler). Michael Freeman, in presenting the proposal, noted that rural and urban representatives of sheriffs, police chiefs, police officers, drug task forces, and prosecutors met to consider whether modifications could be made to the controlled substance thresholds that were consistent with public safety. As a result, this law enforcement group put forth a proposal to create a "marijuana grow" statute, reduce the marijuana thresholds to better reflect what law enforcement was seeing in the community, and increase the first and second degree possession thresholds for cocaine, methamphetamine, and heroin. (See, Appendix H). In addition, the law enforcement group proposed a "kingpin" provision for first degree crimes. The "kingpin" proposal required imposition of the presumptive guidelines sentence based upon increased threshold amounts or existing first degree threshold amounts plus a "kingpin" factor. (See, Appendix I).

At a later meeting, a second proposal for threshold changes came from Brock Hunter and John Stuart (Defense Proposal, State Public Defender John Stuart, Defense Attorney Brock Hunter). They did not oppose the marijuana grow statute. However, they did not believe that any changes to the marijuana thresholds were needed. Further, they indicated a belief that the thresholds for cocaine, methamphetamine, and heroin were too low and disproportional to other offenses at a given severity level, and to other state's drug sentencing laws. They argued that the threshold amounts for first and second degree offenses were adopted to target "kingpins" and indicated their belief that the thresholds no longer achieved that goal. This second proposal advocated dramatic increases in the threshold amounts needed to prosecute offenders based solely upon the amount of the controlled substances. Under this proposal, offenders could be sentenced using the current threshold amounts if there were an additional two "kingpin" factors present. (See, Appendix J).

A third proposal was made by a subgroup of the Working Group. (Judicial/Corrections Proposal, Judge Toddrick Barnette, Judge John Neuville, Judge Pam Alexander, Tom Adkins, Washington County Corrections). This proposal modified law enforcement "marijuana grow" statute. As to marijuana thresholds, it proposed reductions from the current law for first and second degree offenses. As to cocaine, methamphetamine and heroin, this proposal adopted a compromise between the Law Enforcement Proposal and Defense Proposal. It suggested the adoption of a

"kingpin" violator combined with adjusting the present first and second degree controlled substance offenses down one level on the existing guidelines and placement of the "kingpin" violator in the existing severity level IX. It also addressed threshold amounts for first degree possession and sale with the removal of three or more sales as a "kingpin" factor. (See, Appendix K).

The Minnesota Sentencing Guidelines Commission staff provided data as to the projected impact upon the number of prison beds that would be required as to each of the proposals. (See, Appendix L). After the "bed impact" data was received, there was a great deal of discussion about the impact of the various proposals on the various stakeholder groups. Initial votes upon the proposals resulted in deadlocks.

At the December 12, 2008 meeting, the Working Group adopted on a consensus vote a modified version of the "marijuana grow" Law Enforcement Proposal. (See, Appendix M).

At the January 9th meeting, the law enforcement group withdrew its "Kingpin" proposal because of the additional prison beds that would be required. The law enforcement group then modified its marijuana threshold reductions to mitigate the additional number of prison beds needed and the modified marijuana thresholds passed on a 9 – 7 vote. (See, Appendix N). Finally, an amendment to the Law Enforcement Proposal on cocaine, methamphetamine, and heroin thresholds was adopted that increased the threshold amount for 3rd degree sale from 3 grams to 5 grams. The modified Law Enforcement Proposal was then passed by the Working Group on a 9-7 vote. (See, Appendix O).

Conclusion and Recommendations

The 2008 State of Minnesota Legislature directed the formation of the Legislative Working Group to assess and make recommendations to the 2009 Legislature regarding the controlled substance offenses and report back in January 2009.

The Working Group achieved its goals of making specific recommendations regarding the legislatively mandated topics. Each member of the Working Group was actively engaged in the process and contributed greatly to a spirited and thoughtful discussion of these issues.

The diversity of viewpoints represented on the Working Group demonstrated the difficulty of finding consensus among the stakeholders in this difficult area. While the topic area is vast and no report can comprehensively address all of the controlled substance issues facing Minnesota, the members of the working Group hope that this report and its recommendations will provide guidance to the Legislature in the future.

With these criteria in mind, the Legislative Working Group on Controlled Substances makes the following recommendations based on their report and findings:

1) The Legislative Working Group on Controlled Substances unanimously approved a Motion that any recommendations proposed by this Working Group which have local fiscal impacts, are contingent upon adequate State funding to cover said costs for implementing those changes.

2) The Legislative Working Group on Controlled Substances recommends the expanded use of the early release program for non-violent offenders completing chemical dependency treatment. As part of the expansion of the conditional release program the Working Group recommends that half of any savings be used to fund additional chemical dependency treatment within the Department of Corrections and the other half of any savings be distributed to local corrections departments to help offset costs associated with community corrections supervision.

3) The Legislative Working Group on Controlled Substances recommends enacting new Legislation for the prosecution of marijuana grow operations as set forth in the suggested Legislative language in attached Appendix P.

4) The Legislative Working Group on Controlled Substances recommends the revision of threshold amounts for possession of marijuana as outlined in attached Appendix P.

5) The Legislative Working Group on Controlled Substances recommends the revision of threshold amounts for methamphetamine, cocaine and heroin as recommended in attached Appendix P.

APPENDICES

Appendix A: Legislative Mandate to Working Group

Minnesota Session Laws 2008 – Chapter 299, Sec. 27

Sec. 27. **WORKING GROUP ON CONTROLLED SUBSTANCE LAWS; REPORT TO LEGISLATURE.**

Subdivision 1. **Establishment; membership; staff.** (a) The speaker of the house of representatives and the Subcommittee on Committees of the Committee on Rules and Administration of the senate shall jointly appoint a working group on the state's controlled substance laws. The working group shall include:

(1) two representatives of the Minnesota County Attorneys Association;

(2) two representatives of the Board of Public Defense;

(3) three representatives of state law enforcement associations, including one sheriff, one chief of police, and one member of the Minnesota Police and Peace Officers Association;

(4) two representatives of the Judicial Council;

(5) one representative from community corrections or probation;

(6) one expert in the fields of drug treatment and controlled substance laws;

(7) two individuals who are not affiliated with any of the organizations in clauses (1) to (6) and who have relevant experience related to sentencing policy or the criminal justice field; and

(8) four community members that reside in areas adversely affected by controlled substance crimes and violent crimes, two of whom shall be appointed by the speaker of the house of representatives and two of whom shall be appointed by the Subcommittee on Committees of the Committee on Rules and Administration of the senate. One of the community members appointed by the senate must be a member of a community crime prevention organization. Of the community members appointed by the senate, one must reside in Minneapolis and one must reside in greater Minnesota. Of the community members appointed by the house, one must reside in St. Paul and one must reside in a suburb of Minneapolis or St. Paul.

(b) Before making the appointments required under paragraph (a), the legislative appointing authorities must consider the recommendations of the chairs and ranking minority members of the committees and divisions with jurisdiction over criminal justice policy and funding.

(c) The appointments under paragraph (a) must be completed by July 1, 2008. Staff support for the working group shall be provided by the Sentencing Guidelines Commission. The executive director of the Sentencing Guidelines Commission or the executive director's designee shall convene the first meeting of the working group. The working group shall elect its chair from its membership at the first meeting.

Subd. 2. **Subject matter.** (a) The working group must review, assess, and make specific recommendations, including any necessary draft legislation regarding the following alternatives for modification and application of Minnesota's controlled substance laws:

(1) revising the threshold amounts for Minnesota's controlled substance crimes;

(2) establishing a separate sentencing guidelines grid for drug offenses;

(3) establishing additional aggravating factors so as to target certain particularly dangerous offenders;

(4) revising the criminal history point calculations for repeat drug offenders;

(5) maximizing the use of deferred prosecutions for low-level drug offenders under section 152.18 throughout the state; and

(6) increasing the use of the early release program for nonviolent controlled substance offenders who successfully complete drug treatment while incarcerated as provided in section 244.055.

(b) As part of its review of the various possible reforms, the working group may also study and consider:

(1) the significance, if any, of current rates of departure from presumptive guideline sentences for controlled substance crimes;

(2) the significance, if any, of current rates of departure from presumptive guideline sentences for controlled substance crimes for identifiable categories of offenders;

(3) the impact that recent United States Supreme Court criminal sentencing decisions have on implementing further reform;

(4) the barriers to comparing Minnesota's sentencing data with data from other states;

(5) strategies for reducing probation and supervised release violations among drug offenders;

(6) strategies for increasing the efficacy of programs that are now available to treat drug offenders;

(7) the likely impact of any recommended change in policy upon victims of drug-related crimes and the neighborhoods in which these crimes occur;

(8) the likely impact of any recommended change in policy upon the efficacy of law enforcement, prosecution, public defender, or court personnel; or

(9) any other sentencing-related matter that the working group sees fit to consider.

Subd. 3. **Report to legislature.** The working group shall report its findings and recommendations to the chairs and ranking minority members of the house of representatives and senate committees and divisions with jurisdiction over criminal justice policy and funding by January 15, 2009. The working group expires upon the submission of the report required by this subdivision.

EFFECTIVE DATE. This section is effective the day following final enactment

Appendix B: Minutes of Legislative Working Group

Working Group on Controlled Substance Laws
Friday, August 22, 2008
9:00am, Room 112, Capitol
Minutes

I. The meeting of the Controlled Substances Working Group was held on August 22, 2008 in Room 112 of the Minnesota State Capitol. Judge Isabel Gomez, Executive Director, Minnesota Sentencing Guidelines Commission, called the meeting to order at 9:10 a.m.

Those present are Tom Adkins, Washington County Corrections, Dan Cain, President, RS Eden, Melvin Carter, Jr., Retired St. Paul Police Sergeant, Phil Cohen, Jim Crace, Benson Police Department, Mike Freeman,Hennepin County Attorney, Paul Ford, St. Paul Police Department, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Melanie Majors, Executive Director, Longfellow Community Council, Lt. David McLaughlin, Stearns County Sheriff's Office, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney, Judge Pamela Alexander , Executive Director of the Council on Crime and Justice. John Stuart, State Public Defender, Judge Toddrick Barnette, Hennepin County, Paul Hetland, City Clerk, City of Freeport.

Absent members noted by Chair, this includes Carol Falkowski, Director of the DHS Chemical Health Division.

II. Introductions

1. Judge Isabel Gomez made introductory comments
2. Members introduced themselves and discussed their interest in the topic.

III. Work Plan & Logistics

a. Gomez referenced "Proposed Work Plan" and discussed meeting procedures and role of staff.
b. Freeman proposed an alternative plan and referenced "Memorandum on Proposed Work Plan and Schedule."
    i. Group Discussion Followed. Vote postponed until after election of chair and after meeting dates were finalized.

IV. Election of Chair

a. Cain nominated Judge Neuville for chair. Neuville declined the nomination.
b. Gomez opened the floor for nominations.
c. Freeman nominated Thom Pertler for chair. Motion was seconded. Motion carried.

V. Meeting Dates

a. Cain moved that the meetings take place on Fridays on September 12, October 3, October 24, November 14, December 5, December 19 and January 16 at 10am. Motion was seconded. Motion carried.

VI. Work Plan

a. Freeman moved the "Memorandum on Proposed Work plan and Schedule." Motion was seconded.
    i. Group Discussion followed.
    ii. McLaughlin called the question. Motion carried.

VII. Logistics

a. Gomez clarified staff's role for presentations and receiving materials before the meetings.
b. Established protocol for establishing agendas.
c. Established use of majority vote for final report.
d. Established use of Robert's Rules of Order.

VIII. Sentencing Guidelines Presentation

a. Judge Isabel Gomez presented "2008 Legislative Working Group on Controlled Substance Offenses Background Information."
    i. Group discussion followed.

IX. Announcements

a. The Chair requested that members send the Chair ideas for meetings.
b. Members requested information and members conversed about intentions of the group.
c. The Chair reminded members about the protocol for their materials and folders.

X. Adjourn

a. The meeting was adjourned at 11:53 a.m.

Respectfully Submitted,

Alice Seuffert

Committee Administrator

Minnesota Senate

Working Group on Controlled Substance Laws
Friday, October 3, 2008
10am, Room 112, Capitol
Minutes

I. The meeting of the controlled substances working group was held on October 3, 2008 in Room 112 of the Minnesota State Capitol. Chair Thomas Pertler called the meeting to order at 10:10 a.m.

Absent members noted by Chair, this includes Judge Pamela Alexander, Executive Director of the Council on Crime and Justice. In her place is Mark A Haase, Director of Public Policy and Advocacy at the Council on Crime and Justice. Judge Barnett, Paul Hetland, Senator Bill Ingebrigtsen.

Those present are Tom Adkins, Washington County Corrections, Judge Pam Alexander, Executive Director of the Council on Crime and Justice, Judge Toddrick Barnette, Hennepin County, Dan Cain, President, RS Eden, Melvin Carter, Jr., Retired St. Paul Police Sergeant, Phil Cohen, Community Member, Jim Crace, Benson Police Department, Carol Falkowski, Director of the DHS Chemical Health Division, Mike Freeman,Hennepin County Attorney, Paul Ford, St. Paul Police Department, Paul Hetland, City Clerk, City of Freeport, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Melanie Majors, Executive Director, Longfellow Community Council, Lt. David McLaughlin, Stearns County Sheriff's Office, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney, John Stuart, State Public Defender

II. Minutes of the last meeting were approved, as corrected.

III. Reports of Members

3. Law Enforcement

    a. Bob Bushman, Statewide Gang and Drug Task Force Coordinator for the Department of Public Safety, reported background information that is driving violent crime.

    b. Melvin Carter reviewed his report "Controlled Substance, an Oxymoron".

4. Prosecutors

    a. Mike Freeman reported on how communities are affected by drug trafficking.

IV. Guests

    a. Rep. Michael Paymar offered greetings and offered background on the origins of the group.

Group recessed at 12:24 p.m. for lunch. Reconvened at 12:55 p.m.

V. New Business

1. Mike Freeman moved to adopt "Law Enforcement Threshold Proposal October 2008, Freeman Proposal #1, October 2, 2008" with an amendment to

delete “Between 9 and 1 plant” and insert “Between 9 and 5 plants”. This motion was seconded by Melanie Majors.

2. Group discussion followed.

VI. Unfinished Business

a. Chair Pertler suggested that members review definitions of “Drug Kingpin” and “thresholds”.

b. Mike Freeman requested a bed impact from Sentencing Guidelines on the “Law Enforcement Threshold Proposal, dated October 2008”.

VII. Announcements

a. For future meetings, group members should provide materials to staff in advance for duplication purposes.

VIII. Adjourn

a. The meeting was adjourned at 2:00 p.m..

Respectfully Submitted,

Libby Wyrum

Committee Legislative Assistant

Minnesota House of Representatives

Working Group on Controlled Substance Laws
Friday, November 14, 2008
10:00 a.m., Room 112, Capitol
Minutes

I. The meeting of the controlled substances working group was held on November 14, 2008 in Room 112 of the Minnesota State Capitol. Chair Thomas Pertler called the meeting to order at 10:07 a.m.

Those present are Tom Adkins, Washington County Corrections, Phil Cohen, Mike Freeman, Hennepin County Attorney, Paul Ford, St. Paul Police Department (Proxy), Melanie Majors, Executive Director, Longfellow Community Council, Lt. David McLaughlin, Stearns County Sheriff's Office, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney, John Stuart, State Public Defender, Paul Hetland, City Clerk, City of Freeport.

Absent are Judge Toddrick Barnette, Hennepin County, Melvin Carter, Jr., Retired St. Paul Police Sergeant, Jim Crace, Benson Police Department, Carol Falkowski, Director of the DHS Chemical Health Division, Judge Pam Alexander, Executive Director of the Council on Crime and Justice, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Dan Cain, President, RS Eden.

II. Minutes of the last meeting were approved

III. Guests

a. Anne Finn, League of Minnesota Cities and Dana Banwer, City of Minneapolis, Deputy City Attorney, Criminal Division, reported on the impact of controlled substance prosecution on cities.

b. Anne Wall, Senior Researcher with the Minnesota Sentencing Guidelines Commission, reported on estimated bed impacts of proposed modifications to controlled substance statutes.

c. David Crist, Assistant Commissioner, Minnesota Department of Corrections, answered questions regarding prison populations and reported on the Conditional Release Program.

IV. New Business

a. Tom Adkins, Washington County Corrections, shared two reports regarding the impact of treatment and sanctions on recidivism.

b. David Crist, Assistant Commissioner, Minnesota Department of Corrections, answered questions regarding drug offenders in prison.

1. Group discussion followed.

V. Announcements

a. The chair will communicate with members and staff and determine the next meeting.

VI. Adjourn

a. The meeting was adjourned at 11:35am.

Respectfully submitted,
Alice Seuffert
Committee Administrator
Minnesota Senate

Working Group on Controlled Substance Laws
Friday, December 12, 2008
9:30 a.m., Room 112, Capitol
Minutes

I. The meeting of the controlled substances working group was held on December 12. 2008 in Room 112 of the Minnesota State Capitol. Chair Thomas Pertler called the meeting to order at 9:35 a.m.

Those present are Tom Adkins, Washington County Corrections, Judge Pam Alexander, Executive Director of the Council on Crime and Justice, Judge Toddrick Barnette, Hennepin County, Dan Cain (proxy provided to Tom Adkins), President, RS Eden, Melvin Carter, Jr., Retired St. Paul Police Sergeant and co-founder of Save our Sons, Phil Cohen, Jim Crace, Benson Police Department, Mike Freeman, Hennepin County Attorney, Paul Ford, St. Paul Police Department, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Melanie Majors, Executive Director, Longfellow Community Council, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney, John Stuart, State Public Defender, Paul Hetland, City Clerk, City of Freeport.

Absent is Carol Falkowski, Director of the DHS Chemical Health Division; Pam Alexander (proxy provided to Judge Barnette), Executive Director of the Council on Crime and Justice; Lt. David McLaughlin (proxy provided to Jim Crace), Stearns County Sheriff's Office.

I. Minutes of the November 11, 2008 meeting were approved.

II. Brief Guest and Group Member Presentations

i. Mike Freedman from Legal Defense Center made a brief statement.

ii. Anne Finn from the League of Minnesota Cities presented a letter for the group's review and made a brief statement.

iii. Judge Barnette introduced the "third proposal" as set forth by Tom Adkins, Judge Neuville and Judge Barnette.

1. John Stuart recommended the deletion of "transfer and deliver out" of the sale definition."

III. Consensus items/vote

i. "Marijuana Grow Proposal", a spreadsheet, comparing the various proposals was introduced by Chair Pertler.

1. Freeman moved to approve a modified "law enforcement" proposal with the following changes (motion was seconded); modify 3rd Degree – Level 6 (21 mos Stayed) from 10 plants to 25 plants, 5th Degree – Level 3 (1 yr+day stay) from 5 plants to 10 plants, Gross Misdemeanor from none to 1 plant. Group discussion occurred. Freeman later

amended his motion to delete Gross Misdemeanor from 1 plant to none. The motion carried.

ii. Mr. Daniel Loe presented a letter and made a brief statement to the group.

iii. As per the group's mandatory governing legislation, Freeman moved to not create a separate sentencing guideline grid for drug offenses (motion was seconded). After some discussion, the motion carried.

iv. Freeman moved the "Law Enforcement – A2" proposal.

1. Cain moved to reconsider the Law Enforcement – A2 amendment, following the group's adoption of the full proposal, no vote occurred. Cain moves the division of the A2 proposal, discussion occurred (motion seconded).

    a. Discussion on the use of Robert's Rules and Mason's Rules.

    b. Stuart recommends deleting "#2. No change in § 152.18" from the "Law Enforcement - A2" proposal, no vote taken.

    c. Chair Pertler asks the group to vote on the Cain motion. Motion does not carry.

2. Stuart resumes discussion on "#2. No change in § 152.18" from the "Law Enforcement – A2" proposal. Discussion occurred.

    a. Mr. May, Stearns County Prosecuting Attorney, spoke to the dispositional authority by the Courts to use § 152.18.

    b. Carter adds his name to the "Public Defender proposal" and supports a presumptive §152.18. Cain moves that "M.S. § 152.18 be made presumptive" (motion seconded).

    c. Cain moves "152.18 be made presumptive within the "Law Enforcement – A2" proposal (motion seconded). Freeman opposes the motions. Motion failed on a tie.

    d. Cain moves the removal "#2. No change in M.S. 152.18" provision from the Law Enforcement – A2" and have it stand alone outside any of the three proposals.

3. Freeman moves the "Law Enforcement - A2" proposal and its provisions to move forward as separate provisions.

4. Judge Neuville moved to include provisions "#2, 3, and 4 from the "Third" proposal's "other recommendations," dated from 11-19-08. Discussion occurred.

    a. Judge Neuville supports the removal of "the control of 1st degree substances" from the "Third" proposal (motion seconded). Discussion occurred. Motion passed.

    b. Chair Pertler restates motion as the Neville amendment to the "Law Enforcement – A2" proposal "#4. Removing the six-month mandatory minimum sentences presently outlined in the statute for a subsequent felony offense." Motion failed on a tie.

5. Freeman moves the "Law Enforcement – A2" proposal, as amended. Discussion occurred. Motion carried. The A2 amendment is approved, as amended.

IV. Consideration and voting on remaining 6 mandatory legislative topics.

1. Freeman moves the "Law Enforcement - A3" proposal, with an author's amendment to delete title: "Law Enforcement" (motion seconded).

    a. Crace moves to "make any possession of any amount of marijuana (more than 1.4 grams) a misdemeanor, regardless of in motor vehicle or not". Discussion occurred.

Break for lunch at 12:01 p.m.

    b. Crace moves to amend his proposed motion to amendment to "repeal sub. 3 § 152.157 ; motor vehicle." In subdivision 4 amend to "trace amount to 3 grams to a petty. Anything over 3 grams would be a misdemeanor" (motion seconded). Motion carries.

    c. Freeman again moves the "Law Enforcement – A3" proposal (motion seconded).

    d. Judge Neuville moves to amend the "Third Proposal" to include thresholds for marijuana (motion seconded). Discussion occurred.

    e. Chair Pertler puts forward the Neuville amendment. Motion failed on a tie.

2. Chair Pertler moves the "Law Enforcement" proposal for marijuana thresholds. Motion failed on a tie.

3. Adkins moves “any group recommendation must that have adequate money available to cover those costs.” Motion Carried.
4. Freeman moves the “A4” provision as amendment to the “Law Enforcement” proposal (motion seconded). Discussion Occurred. Motion failed on a tie.

V.Adjourn

1. Cohen asks staff to draft the necessary legislation, along with fiscal notes, given for the day’s agreed upon provisions.
2. Judge Barnette encourages the group to work via email or meetings to come to a compromise.
3. Chair Pertler asks the group to meet Friday, January 9 at 9:30 a.m.
4. The meeting was adjourned at 1:55 p.m.

Respectfully submitted,

Libby Wyrum

Committee Legislative Assistant

Minnesota House of Representatives

Working Group on Controlled Substance Laws
Friday, January 9, 2009
10am, Room 107, Capitol
Minutes

I. The meeting of the Controlled Substances Working Group was held on January 9, 2009 in Room 107 of the Minnesota State Capitol. Chair Thomas Pertler called the meeting to order at 10:06 a.m.

Those present are Tom Adkins, Washington County Corrections, Judge Toddrick Barnette, Hennepin County, Dan Cain, President, RS Eden, Melvin Carter, Jr., Retired St. Paul Police Sergeant, Phil Cohen, Jim Crace, Benson Police Department, Carol Falkowski, Director of the DHS Chemical Health Division, Mike Freeman, Hennepin County Attorney, Paul Ford, St. Paul Police Department, Paul Hetland, City Clerk, City of Freeport, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Melanie Majors, Executive Director, Longfellow Community Council, Lt. David McLaughlin, Stearns County Sheriff's Office, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney

Absent members noted by Chair, this includes Judge Pamela Alexander (proxy given to Barnette), Executive Director of the Council on Crime and Justice. John Stuart (proxy given to Hunter), State Public Defender.

II. Group Review of Proposals

III. Review of "A6" Amendment.

a. Freeman moved the "A6" amendment. Barnette moves a friendly amendment as weight of possession and sale to be higher for a 21 month stayed sentence. Barnette goes on to propose "possession as 6 kilos and sale at 3 kilos." Freeman does not incorporate the friendly amendment. Voting in support are 8 members. Voting in opposition are 8 members. Motion failed.

b. Cain moved reconsideration of the "Third/Judges" proposal (motion seconded). Cain moves a second motion to amend his first motion "to adopt what is termed the 'Three but to change possession and sale at third degree to one kilo and 500 grams to possession and sale)."

c. Hunter proposes a friendly amendment to the Cain proposal an amendment to make "third degree to six kilos and three kilos sale" under the "Third" proposal, "one and two would remain the same as the 'Third' proposal (motion seconded with incorporation of friendly amendment). Voting in support are 4 members. Motion failed.

d. Freeman moves an amendment to the "A6" amendment "leaving the first degree and second degree to what they were, but changing 3rd degree possession to one kilo and sale to 500 grams" (motion seconded). Voting

in support are 9 members. Voting in opposition are 8 members. Motion approved.

e. Cain made a point of order "that the Chair only votes to break ties." Discussion occurred about the use of Robert's vs. Mason's Rules.

IV. Minutes approved.

V. Review of "A7" Amendment.

b. Freeman moves the "A7," "Cocaine/Meth/Heroin Threshold Proposals" amendment (motion seconded).

c. Adkins moves to amend the "Law Enforcement" proposal within the "2nd Degree – Level 8" under "Sale:" from 3 to 5 g" (motion seconded). Motion approved.

d. Neuville moves to further amend the "A7," "Cocaine/Meth/Heroin Threshold Proposal" within the "Law Enforcement" "5th Degree – Level 6" "Possession: trace = .10 gram." Motion failed on a tie.

e. Freeman moves the "A7 amendment" with the incorporated Adkins proposal (motion seconded). Voting in support are 9 members. Voting in opposition are 7 members. Motion approved.

VI. Adjourn

a. The meeting was adjourned at 2:34 p.m.

Respectfully Submitted,

Libby Wyrum

Committee Legislative Assistant

Minnesota House of Representatives

Working Group on Controlled Substance Laws
Friday, January 16, 2009
9:30am, Room 112, Capitol
Minutes

I. The meeting of the Controlled Substances Working Group was held on January 16, 2009 in Room 112 of the Minnesota State Capitol. Chair Thomas Pertler called the meeting to order at 9:45 a.m.

Those present are Tom Adkins, Washington County Corrections, Dan Cain, President, RS Eden, Melvin Carter, Jr., Retired St. Paul Police Sergeant, Phil Cohen, Jim Crace, Benson Police Department, Carol Falkowski, Director of the DHS Chemical Health Division, Mike Freeman,Hennepin County Attorney, Paul Ford, St. Paul Police Department, Brock Hunter, Minnesota Association of Criminal Defense Lawyers, Melanie Majors, Executive Director, Longfellow Community Council, Lt. David McLaughlin, Stearns County Sheriff's Office, Judge Tom Neuville, Rice County, Thomas Pertler, Carlton County Attorney

Absent members noted by Chair, this includes Judge Pamela Alexander , Executive Director of the Council on Crime and Justice. John Stuart (proxy given to Hunter), State Public Defender, Judge Toddrick Barnette, Hennepin County, Paul Hetland, City Clerk, City of Freeport (proxy given to Crace).

II. Guests

1. David Crist, Assitant Commissioner, Minnesota Department of Corrections, conveyed opposition to the Working Groups' decisions regarding the CRP changes.

a. Group Discussion Followed

2. Karen Leneretz, Revisor's Office, discussed intent of changes and possible amendments to statutory language.

a. Neuville moved to insert "non violent" in front of non drug on lines 1.3 and 1.8, Delete

line 1.10, Delete new language on 1.16, and Insert "non violent" in front of non drug on

line 1.18 to the document entitled, "KLL09-02." Motion was seconded. Motion carried.

b. Neuville moved to delete "poses a low risk to public safety" on line 1.28 and delete "and, thus," on Line 1.29. On Line 1.28, delete (6) and insert (2) to the document entitled, "KLL09-02." Motion was seconded. Motion carried.

c. Freeman moved to insert period after Tetrahydrocannabinols on line 1.16, Delete rest of line. Delete line 1.17 and line 1.18. Motion was seconded. Motion carried.

III. Old Business

a. Crace moved to repeal 152.027, subdivision 3, change petty misdemeanor to 3-28 grams, and less than 42.5 grams for misdemeanor. Motion was seconded. Motion failed.

b. Hunter moved to repeal 152.027, subdivision 3, change petty misdemeanor to 0-14 grams, more than 14 and less than 42.5 grams for misdemeanor. Motion was seconded. Motion carried

c. Crace moved to insert "this clause does not limit the poser of this state to punish a person for conduct that constitutes a crime under other laws of this state" after lines, 1.20, 2.29, 3.28, and 4.30. Motion was seconded. Motion carried.

IV. New Business

1. Cain moved that the committee report include a recommendation that the Minnesota Sentencing Guidelines Commission, in conjunction with the drug court officials, be directed to develop standards/guidelines for those drug offenders not committed to the DOC." Motion seconded. Motion failed.
    a. Anne Wall, Minnesota Sentencing Guidelines Commission, commented on other states.
2. Report Discussion
    a. Page 12 under 3) change to "enacting." No motion.
    b. Carol Falkowski discussed language concerning a systematic and scientific evaluation. No motion.
    c. Freeman moved that the report be adopted and that the chair be responsible for drafting an executive summary. No second.
    d. Cain discussed his objections to naming the proposals. No motion.
    e. Cain suggested a language change concerning bed impacts and kingpin language on page 7. No motion.
    f. Hunter requested that authors be named on page 11. No motion.
    g. Crace moved that the third proposal and third group's members be named and the proposal be called the Judges/Corrections proposal. Motion seconded. Motion carried.
    h. Hunter expressed concern with language on the botton of page 10 and that after "too low", delete the period and insert, "and disproportionate to other Minnesota offenses at a given severity level and to other states' drug sentencing laws." No motion.

i. Hunter suggested that a chart be attached to the executive summary that details the final agreements.

j. Cain returned with language regarding the Kingpin issue. Cain suggested the following, "Prior to January 9, there were 3 proposals for threshold modifications. All 3 had reference to "kingpins", in the proposal that was ultimately adopted on that date, the author withdrew the kingpin reference based upon increased bed space implications." No motion.

k. Adkins will work with the Chair on guidelines issue.

IV. Announcements

1. The Chair discussed the presentation to the Minnesota Senate Public Safety Budget Division on Wednesday, January 21 at 3pm in Room 112 of the Capitol.
2. The Chair thanked the staff.
3. Cohen thanked the staff and the Chair.
4. Cain thanked the Chair for his work on the report.
5. Freeman will draft a press release for the January 21st hearing.
6. The Chair thanked the group.

V. Adjourn

a. The meeting was adjourned at 11:40 a.m.

Respectfully Submitted,

Alice Seuffert

Committee Administrator

Minnesota Senate

Appendix C: Initial Proposal Grid

First Degree		Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
	Sale	▪ 10 grams Cocaine, Meth or Heroin ▪ 50 grams of a Narcotic/drug other than Cocaine, Meth or Heroin ▪ 50 grams of 200 dosage units of PCP, Amphetamine or a Hallucinogen ▪ 50 Kilos of Marijuana	▪ Less than 4.5 kilos but at least 1.5 kilos of Marijuana weight based	▪ 50 grams or more Cocaine, Meth or Heroin	▪ 40 grams or more Cocaine, Meth or Heroin ▪ 10 grams of Marijuana
	Possession	▪ 25 grams of Cocaine, Meth or Heroin ▪ 500 grams of a Narcotic other than Cocaine, Meth or Heroin ▪ 500 grams or 500 dosage units of PCP, Amphetamine or a Hallucinogen ▪ 100 Kilos of Marijuana	▪ Less than 100 grams of Cocaine, Meth or Heroin but at least 35 ▪ Marijuana weight-based-Less than 9 kilos but at least 3 kilos	▪ 250 grams of Cocaine, Meth or Heroin	▪ 100 grams or more Cocaine, Meth or Heroin ▪ 50 kilograms of Marijuana weight based
	Manufacture	▪ Manufacture any amount of Meth		▪ Manufacture any amount of Meth for sale-any amount	
Sale with Kingpin Factors			▪ Sale Kingpin-4.5 kilos or more of Marijuana	▪ Sale-10 grams with any 2 kingpin factors: *Possession of a firearm at the time of offense *Offense commited for the benefit of a gang *Offense committed in a school zone, park zone, public housing zone *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a pharmacist/medical professional	
Possession Kingpin Factors			▪ Possession Kingpin -100 or more grams of Cocaine, Meth or Heroin	▪ Possession-25 grams with any 2 kingpin factors: *Possession of a firearm at the time	▪ Possession-25 grams with any 2 kingpin factors: *Possession of a firearm at the time

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
		▪ Possession Kingpin-9 kilos or more of Marijuana	of offense *Offense committed for the benefit of a gang *Offense committed in a school zone, park zone, public housing zone *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a pharmacist/medical professional	of offense *Offense committed for the benefit of a gang *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a pharmacist/medical professional
Second Degree				
Sale	▪ 3 grams of Cocaine, Meth or Heroin ▪ 10 grams of a Narcotic drug other than Cocaine, meth or Heroin ▪ 10 grams of 50 dosage units of PCP, Amphetamine or a Hallucinogen ▪ Sell to conspire with or employ someone <18 any amount of Schedule I or II ▪ 25 Kilos of Marijuana ▪ Sell in school/park/public housing zone, or a drug treatment facility; any amount of schedule I or II, PCP, Amphetamine, Hallucinogen, or 5 kilos of Marijuana	▪ Less than 1.5 kilos but at least 250 grams of Marijuana weight based	▪ 10 grams or more Cocaine, Meth or Heroin	▪ 10 grams or more Cocaine, Meth or Heroin ▪ 3 grams of Marijuana
Possession	▪ 6 grams of Cocaine, Meth or Heroin ▪ 50 grams of a Narcotic drug other than Cocaine, Meth or Heroin ▪ 50 grams or 100 dosage units of PCP, Amphetamine or a Hallucinogen ▪ 50 kilos of Marijuana	▪ Less than 35 grams of Cocaine, Meth or Heroin but at least 10 ▪ Marijuana weight-based-Less than 3 kilos but at least 500 grams	▪ 25 grams or more Cocaine, Meth or Heroin	▪ 25 grams or more Cocaine, Meth or Heroin ▪ 25 kilograms of Marijuana weight based

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
Manufacture			▪ Manufacture any amount of Meth for personal use-any amount	
Sale with Kingpin Factors			▪ Sale-3 grams with any 2 kingpin factors: *Possession of a firearm at the time of offense *Offense committed for the benefit of a gang *Offense committed in a school zone, park zone, public housing zone *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a	
Possession Kingpin Factors			▪ Possession-6 grams with any 2 kingpin factors: *Possession of a firearm at the time of offense *Offense committed for the benefit of a gang *Offense committed in a school zone, park zone, public housing zone *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a pharmacist/medical professional	▪ Possession-6 grams with any 2 kingpin factors: *Possession of a firearm at the time of offense *Offense committed for the benefit of a gang *Offense included 3 or more separate sales *Offense involved manufacture of a controlled substance *Offense included use of a licensed status as a pharmacist/medical professional

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
Third Degree				
Sale	▪ Any amount of Cocaine, meth, Amphetamine or another Narcotic ▪ 10 dosage units of PCP or a Hallucinogen ▪ Sell to, conspire with, or employ someone under 18; any amount of Schedule I, II or III, except a Schedule I or II Narcotic ▪ 5 Kilos of Marijuana	▪ Less than 250 grams but at least 125 grams of Marijuana weight based	▪ 3 grams or more Cocaine, Meth or Heroin	▪ Any amount of Cocaine, Meth or Heroin

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
Possession	▪ 3 grams of Cocaine, Meth or Heroin ▪ 10 kilos of Marijuana ▪ Any amount of Meth or Amphetamine in a School/Park/public housing zone or in a treatment facility ▪ 10 grams of a Narcotic Drug other than Cocaine, Meth or Heroin ▪ 50 dosage units of Cocaine, Meth, Heroin or other Narcotics ▪ Any schedule I or II, MDA, MDMA, or 5+dosage units of LSD in a School/Park/public housing zone or in a drug treatment facility	▪ Less than 10 grams of Cocaine, Meth or Heroin but at least 3 ▪ Marijuana weight-based-Less than 500 grams but at least 250 grams	▪ 6 grams or more Cocaine, Meth or Heroin	▪ 4 grams or more Cocaine, Meth or Heroin

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
Fourth Degree				
Sale	▪ Any Schedule I, II, or III except Marijuana ▪ Sell to, employ or conspire with a person <18 for Schedule IV or V ▪ Any amount of Marijuana in a School/Park/public housing zone or a treatment facility, except a small amount for no remuneration			
Possession	▪ 10 dosage units of PCP or a Hallucinogen ▪ Any amount, with the intent to sell, of Schedule I, II or III except Marijuana			
Fifth Degree				
Sale	▪ Sell any amount of Marijuana, except a small amount for no remuneration ▪ Sell any amount of Schedule IV	▪ Less than 125 grams, except a small amount for no remuneration- Marijuana weight based		
Possession	▪ Any amount of Schedule I, II, III, IV except a small amount of Marijuana ▪ Procure, attempt to procure, possess or control any controlled substance by means of fraud, deceit, using a false name or credit, or by misrepresenting self or another as an authorized person.	▪ Marijuana weight-based-Less than 250 grams but at least 42.5 grams	▪ Add a petty misdemeanor section for "trace amount" of Cocaine/Meth/Heroin	▪ Add a petty misdemeanor section for "trace amount" of Cocaine/Meth/Heroin

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Third Proposal
M.S. 152.18	See Attached		▪ Make it presumptive not mandatory for possession offenses, 3rd, 4th and 5th Degree where not used previously. ▪ 152.18 to be used in these cases unless the Court states a substantial reason to the contrary.	▪ 152.18 deferrals should become a presumptive response to first time 4th and 5th degree possession charges.
152.025 subdivision 3 (b)	See Attached		▪ Delete 152.025 subdivision 3 (b), eliminates a mandatory 6 months in jail for a second 5th degree offense.	▪ Delete 152.025 subdivision 3 (b), eliminates a mandatory 6 months in jail for a second 5th degree offense.
Marijuana Misdemeanor			▪ Marijuana Misdemeanor for possession of any amount by person under 21	
Marijuana Grow Operations		▪ First Degree: 100 or more plants ▪ Second Degree: Between 99 and 50 plants ▪ Third Degree: Between 49 and 10 plants ▪ Fifth Degree: Between 9 and 1 plant (Root balls must be included; purity will not)	▪ Adopt Law Enforcement Proposal on Marijuana Grow Operations	▪ Adopt Law Enforcement Proposal on Marijuana Grow Operations with a 5 plant minimum and following changes: ▪ First Degree: 100 or more plants ▪ Second Degree: Between 99 and 50 plants ▪ Third Degree: Between 49 and 26 plants ▪ Fifth Degree: Between 26 and 11 plants ▪ Gross Misdemeanor: Between 10 and 1 plant(s).

	Current Law	Law Enforcement Proposal	Public Defender Proposal	Final Proposal
Conditional Release Program	See Attached		▪ Expand release program for offenders who complete treatment	Continue the Conditional Release Program beyond June 30, 2009 and expand access by doing the following: *Delete M.S. 244.055 sub 6. This will eliminate the loss of prison time in the program for offenders who enter but fail to complete the program. This has become a barrier for offenders entering the program. *Use the chemical dependency assessment completed at prison intake, rather than the drug offense for which the offender is incarcerated, to determine whether an offender is suffering primarily from an addiction to drugs. *Incorporate validated risk assessment tools such as Level of Service Inventory Revised (LSI-R) into the selection criteria to identify offenders who pose less of a risk to public safety and, thus, are more suitable candidates for early release. *Open the program to chemically dependent offenders incarcerated for non-drug offenses, provided they meet all other eligibility criteria and public safety would not be jeopardized.

Appendix D: Minnesota Statute 152.18 & MN Dispositions on Cases

152.18 DISCHARGE AND DISMISSAL.

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

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

Subd. 2. [Repealed, 1996 c 408 art 9 s 10]

Subd. 3. **Expungement of certain marijuana offenses.** Any person who has been found guilty of a violation of section 152.09 with respect to a small amount of marijuana which violation

occurred prior to April 11, 1976, and whose conviction would have been a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in effect on April 11, 1978, but whose conviction was for an offense more serious than a petty misdemeanor under laws in effect prior to April 11, 1976, may petition the court in which the person was convicted to expunge from all official records, other than the nonpublic record retained by the Department of Public Safety pursuant to section 152.15, subdivision 2, clause (5), all recordation relating to the person's arrest, indictment or information, trial and conviction of an offense more serious than a petty misdemeanor. The court, upon being satisfied that a small amount was involved in the conviction, shall order all the recordation expunged. No person as to whom an order has been entered pursuant to this subdivision shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge conviction of an offense greater than a petty misdemeanor, unless possession of marijuana is material to a proceeding.

History: *1971 c 937 s 18; 1973 c 693 s 14; 1978 c 639 s 1; 1986 c 444; 1989 c 290 art 3 s 21; 1992 c 569 s 13; 1993 c 326 art 13 s 11; 1995 c 226 art 2 s 2; 1996 c 408 art 9 s 2*

Probation Before Conviction Initial Dispositions on Cases, State of Minnesota

Year	Probation Before Convition
1999	956
2000	940
2001	1,026
2002	1,173
2003	1,316
2004	1,570
2005	1,711
2006	1,877
2007	1,647
2008*	1,349

*2008 is an estimate based on 10 months of data

Information provided by Janet Marshall

Janet.Marshall@courts.state.mn.us

Probation Before Conviction Dispositions 2007, State of Minnesota

County	Probation Before Convition
Carver County	42
Dakota	221
Goodhue County	39
LeSueur County	3
McLeod County	19
Scott County	120
Sibley County	2
1st District	446
Ramsey	104
Dodge County	22
Fillmore County	1
Freeborn County	20
Olmsted County	54
Rice County	23
Steele County	11
Wabasha County	16
Waseca County	3
Winona County	3
3rd District	153
Hennepin County	406
Blue Earth County	36
Faribault County	8
Martin County	6
Pipestone County	3
Watonwan County	1
5th District	54
Carlton County	32
Cook County	2
Lake County	8
St. Louis County	53
6th District	95

Becker	3
Benton County	1
Clay County	3
Mille Lacs County	11
Morrison County	1
Otter Tail County	14
Stearns County	18
Todd County	2
7th District	53
Chippewa County	1
Kandiyohi County	17
Meeker County	3
Pope County	8
Renville County	1
Stevens County	5
Yellow Medicine County	2
8th District	37
Aitkin County	11
Beltrami County	1
Cass County	1
Crow Wing County	33
Hubbard	1
Koochiching County	2
Red Lake County	2
Roseau County	1
9th District	52
Anoka County	26
Chisago County	15
Kanabec County	12
Pine County	30
Sherburne County	18
Washington County	81
Wright County	65
10th District	247

Appendix E: Chemical Dependency Program Evaluation Executive Summary – March 2008

Chemical Dependency Program Evaluation

March 2008

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March 2008

EXECUTIVE SUMMARY

Substance use figures prominently not only in criminal offending but has also been implicated in the rise of the prison population since the 1980s. From 2002-2007, drug and felony driving while intoxicated (DWI) offenders accounted for 53 percent of the prison population growth within Minnesota. As the volume of drug and DWI offenders entering prison has increased, so, too, has the number of inmates diagnosed as chemically dependent and/or abusive who are in need of chemical dependency (CD) treatment.

Using a retrospective quasi-experimental design, this report evaluates the efficacy of CD treatment in Minnesota Department of Corrections (MNDOC) facilities by comparing recidivism rates between offenders who participated in treatment (treatment group) with those who did not (comparison group). Both the treatment and comparison groups contained offenders who were admitted to prison after 2001, directed to CD treatment, and released during 2005. The comparison group consists of 1,096 offenders who were closely matched to the 1,164 offenders in the treatment group on the characteristics used in the statistical analyses. Of the 1,164 offenders in the treatment group, most (N = 671) participated in short-term (i.e., 90 days) treatment programs. Because short-term programs were discontinued by the MNDOC in 2006, this study also assesses the efficacy of medium- and long-term CD programming by comparing reoffense rates between the 493 medium- and long-term treatment participants with a carefully matched comparison group of 493 non-participants. Recidivism—the outcome measure in this study—was quantified as both a felony reconviction and as a reincarceration for a new offense.

Results

- Of the 1,164 offenders who participated in CD treatment (i.e., the treatment group), 72 percent completed treatment or successfully participated until release.
    - Results showed that the odds of completing treatment were significantly lower for offenders with discipline convictions, but were significantly higher for female offenders, offenders with longer lengths of stay, and offenders who participated in short-term treatment programs.

- At the end of the follow-up period, offenders who participated in CD treatment had significantly lower rates of felony reconviction (15%) and reincarceration (8%) than the comparison group, whose rates were 19 percent for reconvictions and 12 percent for reincarcerations for a new offense.
    - Regarding treatment outcome, the lowest recidivism rates were found for offenders who successfully participated until release, followed by those who completed treatment. Offenders who quit treatment had the highest recidivism rates.
    - Regarding program duration, offenders who participated in medium-term programs had the lowest recidivism rates, whereas the highest rates were found for those who entered short-term programs.

- Results from the multivariate statistical analyses showed that participation in CD treatment significantly decreased the risk of time to reoffense, reducing it by 23 percent for reconvictions and 31 percent for reincarcerations.

- A successful treatment outcome significantly reduced the risk of time to reoffense, decreasing it by 26 percent for reconvictions and 36 percent for reincarcerations.

- Similar results were found for the analyses that examined the impact of medium- and long-term CD treatment on recidivism.

    - Participation in a medium- or long-term CD treatment program reduced the risk of time to reoffense by 30 percent for reconvictions and 42 percent for reincarcerations.
    - A successful outcome in a medium- or long-term treatment program decreased the risk of time to reoffense by 46 percent for reconvictions and 49 percent for reincarcerations.

The results presented in this study suggest that the risk of recidivism is reduced significantly for offenders who participate in prison-based CD treatment, particularly among those with a successful treatment outcome. There are a few limitations with this study, however, that bear consideration. First, in focusing exclusively on recidivism, this evaluation did not include substance abstention as an outcome measure and, thus, may not have fully captured the full effects of CD programming. Second, given the importance of providing a continuum of care from the institution to the community, aftercare programming is considered to be an essential component of effective CD treatment. But due to the absence of post-release treatment data, it is unclear as to whether variations in the extent to which offenders participated in aftercare may have affected the findings presented here. By collecting data on substance use and aftercare programming in the community, research currently being conducted by the MNDOC may eventually shed light on these issues.

Appendix F: Minnesota Statute 244.055

244.055 CONDITIONAL RELEASE OF NONVIOLENT CONTROLLED SUBSTANCE OFFENDERS; TREATMENT.

Subdivision 1. **Conditional release authority.** The commissioner of corrections has the authority to release offenders committed to the commissioner's custody who meet the requirements of this section and of any rules adopted by the commissioner.

Subd. 2. **Conditional release of certain nonviolent controlled substance offenders.** An offender who has been committed to the commissioner's custody may petition the commissioner for conditional release from prison before the offender's scheduled supervised release date or target release date if:

(1) the offender is serving a sentence for violating section 152.021, subdivision 2 or 2a; 152.022, subdivision 2; 152.023; 152.024; or 152.025;

(2) the offender committed the crime as a result of a controlled substance addiction, and not primarily for profit;

(3) the offender has served at least 36 months or one-half of the offender's term of imprisonment, whichever is less;

(4) the offender successfully completed a chemical dependency treatment program of the type described in this section while in prison;

(5) the offender has not previously been conditionally released under this section; and

(6) the offender has not within the past ten years been convicted or adjudicated delinquent for a violent crime as defined in section 609.1095 other than the current conviction for the controlled substance offense.

Subd. 3. **Offer of chemical dependency treatment.** The commissioner shall offer all offenders meeting the criteria described in subdivision 2, clauses (1), (2), (5), and (6), the opportunity to begin a suitable chemical dependency treatment program of the type described in this section within 160 days after the offender's term of imprisonment begins or as soon after 160 days as possible.

Subd. 4. **Chemical dependency treatment program components.** (a) The chemical dependency treatment program described in subdivisions 2 and 3 must:

(1) contain a highly structured daily schedule for the offender;

(2) contain individualized educational programs designed to improve the basic educational skills of the offender and to provide vocational training, if appropriate;

(3) contain programs designed to promote the offender's self-worth and the offender's acceptance of responsibility for the consequences of the offender's own decisions;

(4) be licensed by the Department of Human Services and designed to serve the inmate population; and

(5) require that each offender submit to a chemical use assessment and that the offender receive the appropriate level of treatment as indicated by the assessment.

(b) The commissioner shall expel from the chemical dependency treatment program, any offender who:

(1) commits a material violation of, or repeatedly fails to follow the rules of the program;

(2) commits any criminal offense while in the program; or

(3) presents any risk to other inmates based on the offender's behavior or attitude.

Subd. 5. **Additional requirements.** To be eligible for release under this section, an offender shall sign a written contract with the commissioner agreeing to comply with the requirements of this section and the conditions imposed by the commissioner. In addition to other items, the contract must specifically refer to the term of imprisonment extension in subdivision 6. In addition, the offender shall agree to submit to random drug and alcohol tests and electronic or home monitoring as determined by the commissioner or the offender's supervising agent. The commissioner may impose additional requirements on the offender that are necessary to carry out the goals of this section.

Subd. 6. **Extension of term of imprisonment for offenders who fail in treatment.** When an offender fails to successfully complete the chemical dependency treatment program under this section, the commissioner shall add the time that the offender was participating in the program to the offender's term of imprisonment. However, the offender's term of imprisonment may not be extended beyond the offender's executed sentence.

Subd. 7. **Release procedures.** The commissioner may deny conditional release to an offender under this section if the commissioner determines that the offender's release may reasonably pose a danger to the public or an individual. In making this determination, the commissioner shall follow the procedures contained in section 244.05, subdivision 5, and the rules adopted by the commissioner under that subdivision. The commissioner shall consider whether the offender was involved in criminal gang activity during the offender's prison term. The commissioner shall also consider the offender's custody classification and level of risk of violence and the availability of appropriate community supervision for the offender. Conditional release granted under this section continues until the offender's sentence expires, unless release is rescinded

under subdivision 8. The commissioner may not grant conditional release unless a release plan is in place for the offender that addresses, at a minimum, plans for aftercare, community-based chemical dependency treatment, gaining employment, and securing housing.

Subd. 8. **Conditional release.** The conditions of release granted under this section are governed by the statutes and rules governing supervised release under this chapter, except that release may be rescinded without hearing by the commissioner if the commissioner determines that continuation of the conditional release poses a danger to the public or to an individual. If the commissioner rescinds an offender's conditional release, the offender shall be returned to prison and shall serve the remaining portion of the offender's sentence.

Subd. 9. **Offenders serving other sentences.** An offender who is serving both a sentence for an offense described in subdivision 2 and an offense not described in subdivision 2, is not eligible for release under this section unless the offender has completed the offender's full term of imprisonment for the other offense.

Subd. 10. **Notice.** Upon receiving an offender's petition for release under subdivision 2, the commissioner shall notify the prosecuting authority responsible for the offender's conviction and the sentencing court. The commissioner shall give the authority and court a reasonable opportunity to comment on the offender's potential release. If the authority or court elects to comment, the comments must specify the reasons for the authority or court's position. This subdivision applies only to offenders sentenced before July 1, 2005.

Subd. 11. **Sunset.** This section expires July 1, 2009.

History: *2005 c 136 art 13 s 6; 2006 c 260 art 4 s 11,12*

Appendix G: Conditional Release Program 2009 Report to the Legislature Executive Summary

Conditional Release Program

2008 Report to the Legislature

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February 2008

This information will be provided in alternative format upon request.

Printed on recycled paper with at least 10 percent post-consumer waste.

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Executive Summary

The Conditional Release Program (CRP) is designed for certain low-risk drug offenders who are incarcerated for a crime committed as a result of a controlled substance addiction. The goals of CRP are to provide chemical dependency treatment and reduce the prison population by releasing early those participants who successfully complete treatment and the incarcerated phase of CRP. Notably, offenders who fail to complete the incarcerated phase of CRP are required by statute to have the time spent in this phase added to their term of imprisonment. Those who complete the incarcerated phase of CRP are placed under Intensive Supervised Release (ISR).

While CRP was being implemented, the Minnesota Department of Corrections (DOC) sought input from two nationally-known researchers to alleviate concerns that the enabling legislation did not accommodate a viable outcome evaluation of CRP. These researchers were asked to complete program reviews and include recommendations for a CRP evaluation. The reviews were completed at the end of 2005. In addition, the DOC contracted with the Council on Crime and Justice (CCJ) to complete a process evaluation of CRP. The DOC will continue to further evaluate the program as additional data become available.

CRP was implemented in both Minnesota Correctional Facility (MCF)-Lino Lakes, a men's facility, and the MCF-Shakopee, a women's facility, during the fall of 2005. Programming is a compilation of pre-existing classes offered at these two facilities. The process evaluation completed by the Council on Crime and Justice (CCJ) in June 2007 shows that over 2,570 offenders were screened for CRP between the implementation of the program in the summer of 2005 and the publication of the report in the summer of 2007. Only 49 (1.9%) of the 2,570 offenders made it through the screening process during this time and entered CRP. Nonetheless, CRP has saved 5,427 days of prison bed space as of January 1, 2007. Given a marginal per diem of $61.34 during FY 2006-2007, the bed days saved result in $332,892 in costs that have been avoided. This figure is reduced to $218,925, however, once the cost of ISR supervision for CRP participants is deducted. Notably, fiscal analyses conducted by the DOC and the legislature estimated the cost that would be avoided with the implementation of CRP was $1.7 million; this amount was taken out of the DOC's budget when the CRP legislation was passed. The actual savings fall far short of the fiscal projections for this program.

By the end of October 2007, 51 offenders had entered CRP. Six of these offenders dropped out, and three currently are participating in the incarcerated phase of CRP. The remaining 42 (82%) completed programming and were released from prison. Of the 42 offenders released, only one (2%) was returned to prison for violating conditions of supervised release by the end of October 2007. None of the offenders has yet to return to prison for a new offense.

Examination of CRP approval and admission data over time showed a small number of offenders approved for and admitted to CRP, particularly after the initial screening of the incarcerated population in 2005. This finding is concerning as the decrease in approval

and admission rates has led to a decline in the CRP population. Part of the decline in recent months is likely due to a drop in the number of drug offenders – the type of offender targeted for CRP – admitted to prison. The total number of drug offense new commitments dropped from 806 in FY 2004 to 678 in FY 2007, a 16 percent decrease. Most of this decrease has been due to declining admissions for meth offender new commitments, which were down to 306 in FY 2007 after peaking at 417 in FY 2004. It is difficult to predict whether this decline in new commitments, particularly for meth offenders, will continue. If it does, however, the result will be a continued reduction in the pool of offenders eligible for CRP.

Also concerning is the number of offenders opting out during the screening process. Findings from the CCJ screening data analysis show that 267 offenders declined to participate in CRP at some point in the screening process. Undoubtedly not all of these offenders would have been deemed eligible for CRP, but it is certain that some would. Even if only 20 percent (N = 53) of the 267 decliners had elected to continue the screening process and ultimately were chosen to participate in CRP, the number of CRP participants would more than double in size.

Additional findings from the CCJ process evaluation include:

- Overall, nearly all of the participants (97%) found CRP as a whole to be helpful. The aspects rated as most helpful by participants included the highly structured daily schedule, helping participants take responsibility for their illegal behavior, preparing participants for reentry, and assisting participants in avoiding illegal activities. Responses obtained from social support persons were similar in nature as all mentioned support, accountability, and responsibility.
- The majority of offenders screened had multiple reasons for ineligibility, but the most common reasons were that the offender was implicated in the sale of drugs, had insufficient time left to serve, or exhibited behavioral problems including disciplinary problems while incarcerated or was considered a security threat. Many offenders also had other active sentences or detainers or were classified as a violent or predatory offender. A relatively large number of offenders (267) elected to remove themselves from the screening process at some point.
- Female offenders were less likely than male offenders to be eliminated for behavioral issues (namely disciplinary issues or posing a security threat) but more likely to fail their Behavioral Health Review. In addition, women were more likely to be sentenced for a drug offense not included in the statutory requirements for CRP.
- African-American offenders are more likely than others to be deemed ineligible because of institutional behavioral issues, the offense involved the sale of drugs, a current or previous offense classified the offender as a predatory offender, or the offender did not have sufficient time to serve.
- CRP participants had less extensive criminal backgrounds and fewer prior incarcerations than non-CRP participants. None of the CRP participants had

more than two prior felony convictions, and 90 percent had not been incarcerated in prison prior to the current incarceration.

- Many of those interviewed commented on the CRP selection criteria. Some felt that the criteria were too stringent while others believed the criteria needed to be rigorous given that the program allows for the early release of offenders. Nevertheless, most want to proceed slowly if a decision is made to modify the criteria. Some design committee members commented that the criteria resulted in the selection of a certain type of offender to the program – namely, white offenders from rural Minnesota who comprise the majority of the methamphetamine inmate population. It is unclear from the CCJ report if the committee members felt negatively toward the selection criteria favoring methamphetamine users, or if they were aware that this was the intent of the legislation authors.
- Most CRP participants reported that the classes they participated in were helpful. All participants reported that the victim impact class was helpful. The smallest percentage of participants rated the pre-release class as helpful. Offenders and CRP staff commented on the limited educational programming made available to offenders due primarily to the fact that chemical dependency treatment takes up a large amount of an offender's available time.
- Offenders at MCF-Lino Lakes were required to write an 18-page reentry plan prior to their release. Many of the CRP staff and offenders felt that this process was particularly helpful. A number of offenders, however, also said it was stressful.
- Once released, housing was easiest for participants to find and employment was most difficult. Most offenders did obtain employment, best described as manual labor.
- Intensive Supervised Release (ISR) was seen as a helpful component of CRP by both participants and their social support. A few participants commented on the contradiction between the importance of not isolating oneself in the community, as expressed by treatment providers, and the fact that ISR initially involves house arrest.
- Participants and social support interviewees felt the program prepared participants well for release. Overall, 57 percent of the offenders rated their transition as very or somewhat easy, and 97 percent found CRP as a whole to be helpful. All the social support interviewees who knew other people who had been incarcerated felt that CRP participants were better equipped to transition smoothly into the community.

CCJ recommendations:

- Modify the selection criteria to ensure that more offenders participate in the program.
- House all CRP participants separately from the rest of the prison population to better foster a therapeutic community.
- Allow participants to work on their vocational skills.
- Allow for more individualization of ISR.
- Place greater emphasis on parenting and family reunification.

- Eliminate the treatment "pull-up" system, which mandates that inmates report on each others' behavior.
- Develop a brochure outlining CRP goals and programming, ISR, and after-care.

DOC conclusions:
CRP is scheduled to sunset in June 2009. If the program was extended beyond this date, the DOC believes the number of participants would need to increase in order for it to be a viable correctional program that reaches its anticipated cost-reduction potential. However, sufficiently increasing the size of the CRP population would require modifications to the selection criteria. To this end, the DOC has identified three areas where possible revisions to the eligibility criteria could be considered:

- Use the chemical dependency assessment completed at intake, rather than the drug offense for which the offender is incarcerated, to determine whether an offender is suffering primarily from an addiction to drugs.
- Incorporate validated risk assessment tools such as the Level of Service Inventory-Revised into the selection criteria to identify offenders who pose less of a risk to public safety and, thus, are more suitable candidates for early release.
- Examine whether chemically dependent offenders incarcerated for non-drug offenses should be admitted to the program provided they meet all other eligibility criteria and public safety would not be jeopardized.

Appendix H: Law Enforcement Threshold Proposal

October 2008

I. COCAINE/HEROIN/METH THRESHOLD AMOUNTS--POSSESSION

"**Kingpin**" Statute:
Present: None exists
Proposed: 100 or more grams

First Degree:
Present: 25 grams or more
Proposed: Less than 100 but at least 35

Second Degree:
Present: Less than 25 grams but at least 6
Proposed: Less than 35 but at least 10 grams

Third Degree:
Present: Less than 6 grams, but at least 3
Proposed: Less than 10 grams but at least 3

Fourth: No proposal yet

Fifth Degree:
Present: Less than three grams
Proposed: Same as present

II. MARIJUANA GROW OPERATION - PLANT POSSESSION THRESHOLDS

Currently Minnesota does not have a law specifically covering grow operations.

First Degree: 100 or more plants

Second Degree: Between 99 and 50 plants

Third Degree: Between 49 and 10 plants

Fifth Degree: Between 9 and 1 plant

(Root balls must be included; purity will not).

III. MARIJUANA WEIGHT-BASED POSSESSION THRESHOLDS

Kingpin
Present: No kingpin
Proposed: 9 kilos or more

First Degree
Present: 100 kilos or more
Proposed: Less than 9 kilos but at least 3 kilos

Second Degree
Present: Less than 100 but at least 50 kilos
Proposed: Less than 3 kilos but at least at least 500 grams

Third Degree
Present: Less than 50 but at least 10 kilos
Proposed: Less than 500 grams but at least 250 grams

Fifth Degree
Present: Less than 10 kilos but at least 42.5
Proposed: Less than 250 grams but at least 42.5 grams

IV. MARIJUANA WEIGHT-BASED SALE THRESHOLDS

Kingpin:
Present: None exists
Proposed: 4.5 kilos or more

First Degree
Present: Greater than 50 kilos
Proposed: Less than 4.5 kilos but at least 1.5 kilos

Second Degree
Present: Less than 50 kilos but at least 25 kilos
Proposed: Less than 1.5 kilos but at least 250 grams

Third Degree
Present: Less than 25 kilos but at least 5 kilos
Proposed: Less than 250 grams but at least 125 grams

Fifth Degree
Present: less than 5 kilos, except a “small amount” for no remuneration
Proposed: Less than 125 grams, **except a small amount for no remuneration**

Appendix I: Law Enforcement Kingpin Proposal

Penalty: Presumptive Sentence becomes non-waivable. In essence, a mandatory minimum (like 2nd 609.11 offense).

Definition:

1. Cocaine/Heroin Meth

Possess 250 grams
Sale 100 grams
Possess 35 grams + 1 factor
Sale 10 grams + 1 factor

2. Marijuana

Possess 9 kilos
Sale 4.5 kilos
Possess 3 kilos + 1 factor
Possess 100 plants + 1 factor
Sale 1.5 kilos + 1 factor

3. Factors:

a) the defendant possessed a felony amount of two or more additional controlled substances during the commission of the offense;

b) the defendant has a prior conviction for a crime of violence under 624.713, subd. 5;

c) the underlying offense involved the manufacture of methamphetamine;

d) the defendant or an accomplice possessed or used a firearm or other dangerous weapon during the commission of the offense;

e) the defendant committed the offense for the benefit of a gang;

f) the defendant committed the offense with three or more accomplices;

g) the defendant manufactured, sold, or possessed with the intent to sell a controlled substance in three or more counties (or municipal jurisdictions) during the commission of the offense (this would only apply in cases where the sales have been aggregated into one count);

h) the defendant received large amounts of money or property in exchange for a controlled substance during the commission of the offense;

i) the defendant or an accomplice, during the commission of the offense, intentionally or recklessly caused or permitted a physical condition to exists that caused demonstrable bodily to a law enforcement officer making a valid arrest or lawful investigation into the person's or accomplices unlawful acts;

j) the defendant or an accomplice distributed a controlled substance to a minor or vulnerable adult during the commission of the offense;

k) the defendant or an accomplice, during the commission of the offense, possessed, manufactured, or sold controlled substances in the presence of a child;

l) the defendant or an accomplice manufactured, sold, or possessed the controlled substance in a school zone, park zone, public housing zone, correctional facility, or drug treatment facility during the commission of the offense;

m) three or more of the sales involved a quantity of controlled substance in excess of the minimum threshold for the offense (This would only apply to cases where multiple sales have been aggregated into one count) (e.g. sales with three or more sales involving 10 or more grams for first degree and 6 or more grams for second degree.)

Appendix J: Public Defense Proposal

FOCUS ON DANGEROUS DRUG OFFENDERS:
THRESHOLDS AND KINGPINS October, 2008

proposal of Minnesota Association of Criminal Defense Lawyers/ State Public Defender

6 GOALS:

- concentrate prison resources on the most dangerous people
- reduce beds to create money for treatment for the less dangerous
- make serious drug crimes proportional to crimes of violence
- put the "kingpin factors" all in one place, in with the drug laws
- expand the in-prison treatment, "earn an early release" program
- make use of 152.18 "second chance" dispositions more consistent statewide

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I. COCAINE/HEROIN/METH THRESHOLD AMOUNTS: POSESSSION, SALE, and KINGPIN FACTORS

First Degree: [1st Offense—presumed sentence: 86 months]

(a) Sale---50 grams or more
(b) Possession---250 grams or more
(c) Manufacture of meth for sale—any amount
(d) Sale---10 grams, Possession 25 grams, with any 2 Kingpin Factors:

- possession of a firearm at the time of the offense
- offense committed for the benefit of a gang
- offense committed in a school zone, park zone, public housing zone
- offense(s) included 3 or more separate sales
- offense involved manufacture of a controlled substance
- offense involved use of a licensed status as a pharmacist/medical professional

Second Degree: [1st Offense—presumed sentence: 48 months]

(a) Sale—10 grams or more
(b) Possession---25 grams or more
(c) Manufacture of meth for personal; use—any amount
(d) Sale---3 grams, Possession of 6 grams, with any 2 King pin Factors

Third Degree: [1st Offense—presumed sentence:
21 months STAYED, probation,
up to 1 year local jail and/or treatment]

(a) Sale---3 grams or more
(b) Possession—6 grams or more

Fourth Degree: no changes.

Fifth Degree: add a petty misdemeanor section for "trace amount" of cocaine/meth/heroin.

Marijuana: adopt Law Enforcement Proposal on "growing".

****

Other changes:

- **EXPAND prison release program** for offenders who complete treatment
- **ADD: marijuana misdemeanor:** possession of any amount by person under 21
- **DELETE: "aggregation" of small sales:** use "3 sales" Kingpin Factor instead
- **152.18: make it PRESUMPTIVE (not "mandatory") for:** Possession offenses, 3rd, 4th, 5th Degree, where not used previously. 152.18 to be used in these cases UNLESS the Court states a substantial reason to the contrary.
- **DELETE: 152.025 subd. 3 (b):** This change eliminates a MANDATORY 6 months in jail for a second 5th Degree offense.

Appendix K: Third Proposal

Draft of 11-19-08
Modification of Controlled Substance Statutes

First Degree
Present: Possession of 25 grams or more, sale of 10 grams or more
Law Enforcement/Prosecutors: Possession of more than 35 grams, no change to sale, add a new kingpin statute for possession of more than 100 grams
Public Defenders: Possession of more than 250 grams, sale of 50 grams, manufacture of methamphetamine for sale in any amount, or sale of 10 grams/possession of 25 grams with any two Kingpin factors

Public Defender Kingpin Factors
Possession of a firearm at the time of the offense
Offense committed for the benefit of a gang
Offense committed in a school zone, park zone, public housing zone
Offense(s) included 3 or more separate sales
Offense involved manufacture of a controlled substance
Offense involved use of a licensed status as a pharmacist/medical professional

Recommendation: Possession of 100 grams, sale of 40 grams, modify the marijuana to 50 kilograms, or sale of 10 grams/possession of 25 grams with any two of the following Kingpin factors

Kingpin Factors
Possession of a firearm at the time of the offense
Offense committed for the benefit of a gang
Offense(s) included 3 or more separate sales
Offense involved manufacture of a controlled substance
Offense involved use of a licensed status as a pharmacist/medical professional

Second Degree
Present: Possession of 6 grams or more, sale of 3 grams or more
Law Enforcement/Prosecutors: Possession of 10 grams or more, no change to sale
Public Defenders: Possession of 25 grams or more, sale of 10 grams or more, manufacture of methamphetamine for personal use in any amount, or sale of 3 grams/possession of 6 grams with any two Kingpin factors

Public Defender Kingpin Factors
Possession of a firearm at the time of the offense
Offense committed for the benefit of a gang
Offense committed in a school zone, park zone, public housing zone
Offense(s) included 3 or more separate sales
Offense involved manufacture of a controlled substance
Offense involved use of a licensed status as a pharmacist/medical professional

Recommendation:, Possession of 25 grams, sale of 10 grams, and modify the marijuana to 25 kilograms, or sale of 3 grams/possession of 6 grams with any two of the following Kingpin factors

Kingpin Factors
Possession of a firearm at the time of the offense
Offense committed for the benefit of a gang
Offense(s) included 3 or more separate sales
Offense involved manufacture of a controlled substance
Offense involved use of a licensed status as a pharmacist/medical professional

Third Degree
Present: Possession of 3 grams or more, sale of any narcotic drug
Law Enforcement/Prosecutors: Possession of 3 grams or more, no change to sale
Public Defenders: Possession of 6 grams or more, sale of 3 grams or more

Recommendation: Possession of 6 grams, sale of any amount
Fourth Degree
No change

Fifth Degree
Present: Possession of less than 3 grams
Law Enforcement/Prosecutors: No change
Public Defenders: Add a petty misdemeanor section for trace amount of cocaine, methamphetamine, heroin

Recommendation: Add a misdemeanor section for trace amount of cocaine, methamphetamine, or heroin

Other Recommendations

M.S. 152.18 deferrals of prosecution should become a presumptive response to first time 4th and 5th degree possession charges.

Eliminate mandatory six-month sentences as described in M.S. 152.025, subd. 3(b).

Adopt the Law Enforcement/County Attorney's proposals on marijuana grow operations, with a 5 plant minimum.

- First Degree: 100 or more plants
- Second Degree: Between 99 and 50 plants
- Third Degree: Between 49 and 26 plants
- Fifth Degree: Between 25 and 11 plants
- Gross Misdemeanor: Between 10 and 1 plant(s)

Continue the Conditional Release Program (CRP) beyond June 30, 2009, and expand access by doing the following:

- Delete M.S.244.055, subd. 6. This will eliminate the loss of prison time in the program for offenders who enter, but fail, to complete the program. This has become a barrier for offenders entering the program.
- Use the chemical dependency assessment completed at the prison intake, rather than the drug offense for which the offender is incarcerated, to determine whether an offender is suffering primarily from an addiction to drugs.
- Incorporate validated risk assessment tools such as the Level of Service Inventory-Revised (LSI-R) into the selection criteria to identify offenders who pose less of a risk to public safety and, thus, are more suitable candidates for early release.
- Open the program to chemically dependent offenders incarcerated for non-drug offenses, provided they meet all other eligibility criteria and public safety would not be jeopardized.

Appendix L: Initial Bed Impact

Minnesota Sentencing Guidelines Commission

Estimated Prison Bed Impacts of Proposed Modifications to Controlled Substance Statutes

Combined Estimated Impact of all Proposals

Comparison of Prison Bed Costs/Savings
(Bed savings indicated with a –sign, additional costs with a +)

Proposal	Cocaine/Meth Thresholds	Cocaine/Meth Kingpin Provisions	MJ Thresholds (Including Kingpins)	Total
Law Enforcement	-68	+85	+251	+268
Public Defense	-594	Unknown, but could reduce bed savings	No proposal	-594
Sub-Group	-494	Unknown, but could reduce bed savings	+10	-484

Threshold Proposals

A shorter version of this table appeared on the last page of the document that was in your package.
This table displays the estimated impact of the three threshold proposals for cocaine/meth, as well as the number of offenders who would be affected. It does not include the impact of any of the Kingpin provisions or the marijuana grow or sale/possession proposals.

Comparison of Prison Bed Savings

Proposal	Sale Offenses	Possession Offenses	Total Bed Savings	# Offenders Shift to Probation	# Offenders Receive Shorter Sentences
Law Enforcement	---	68	68	11	27
Public Defense	289	305	594	134	204
Sub-Group	203	291	494	103	159

Kingpin Provisions

I do not have the information needed to identify which cases would qualify as Kingpins based on factors other than drug weight and dangerous weapon possession. There were 28 cases sentenced in 2008 where the worksheet indicated that a dangerous weapon was present. The Public Defense and Sub-Group proposals are unlikely to require additional prison beds because the offenders who would qualify as Kingpins would remain ranked where they currently are. To the extent that those two Kingpin proposals could prevent offenders from moving to a lower severity level based on the drug weight, the result could be some reduction in bed savings.

The Law Enforcement proposal could result in some need for additional beds because it requires that offenders who meet the criteria for Kingpins receive their presumptive sentence, in effect eliminating departures. For the Kingpins identifiable solely based on drug weights, those bed costs are displayed in the table below. The first "additional beds" column displays the beds needed for the cases with weights available. The Total column is based on doubling the impact for sale cases based on having amounts for 47% of sale cases and adding 25% to the impact for possession offenses based on having amounts for 76% of cases. This would offset all of the bed savings in the law enforcement threshold proposal.

Additional Prison Beds Needed for Law Enforcement Kingpins Based on Weights

Offense	Number of Offenders with Qualifying Weights	Number Receiving Probation	Number Receiving Prison Sentences Shorter than Recommended	Additional Beds Needed for Cases Identified	Total Additional Beds Needed
1st Deg. Sale (100 Grams)	9	5	1	26	52
1st Deg. Poss. (250 Grams)	10	1	4	15	19
Total	19	6	5	41	71

Of the 5 first degree offenders sentenced in 2007 who possessed a dangerous weapon, 2 received mitigated dispositional departures. Of the 3 who received prison sentences, 2 received a mitigated duration. If all of those offenders were required to receive their presumptive sentences, 14 additional prison beds would be required.

Total Additional Prison Beds Needed for Law Enforcement Kingpins

Beds based on Weights	Beds for Offenses with Dangerous Weapons	Total Additional Beds Needed
71	14	85

Appendix M: Marijuana Grow Proposals

Severity Level	Law Enforcement	Defense	"Third"
1st Degree -Level 9 (86 mos)	100 plants	100 plants	100 plants
2nd Degree-Level 8 (48 mos)	50 plants	50 plants	50 plants
3rd Degree-Level 6 (21 mos Stayed)	~~10~~ plants **25** plants	10 plants	**26** plants
5th Degree-Level 3 (1yr+day stay)	~~5~~ plants **10** plants	5 plants	**11** plants
Gross Misdemeanor	None	None	**1** plant
	Passed as amended		**No vote**

Appendix N: Marijuana Threshold Amendment

AMENDMENT – A6

Changes to the marijuana thresholds

First Degree:
Possession: ~~3~~ **25** kilos
Sale: ~~1.5~~ **12.5** kilos

Second Degree
Possession: ~~500g~~ **12.5** kilos
Sale: ~~250g~~ **6** kilos

Third Degree
Possession: ~~250 g~~ **1 kilo**
Sale: ~~125 g~~ **500g**

Fifth Degree:
Possession: No Change
Sale: No Change

Appendix O: Estimated Prison Bed Impact

Minnesota Sentencing Guidelines Commission

Proposed Modifications by the Working Group on Controlled Substances
Estimated Prison Bed Impact of Threshold Proposals

Total Combined Impact of Proposed Changes to Thresholds:
Reduction in Prison Beds of 97

Cocaine/Meth Heroin	# of Cases Shift Severity	#Cases Shift to Probation	Prison Beds	# Cases Shorter Sentences	Prison Beds	Total prison Bed Savings
Sale	37	8	-22	18	-36	-58
Possession	128	11	-31	27	-37	-68
Total	165	19	-53	45	-73	-126
Marijuana	**# of Cases Shift Severity**	**#Cases Shift to Prison**	**Prison Beds**	**# Cases Longer Sentences**	**Prison Beds**	**Total Additional Prison Beds**
Sale	26	3	+8	3	+7	+15
Possession	35	5	+12	2	+2	+14
Total	61	8	+20	5	+9	+29
All Threshold Changes	**# of Cases Shift Severity**	**#Cases Shift Disposition**	**Prison Beds**	**# Cases Change Sentence Length**	**Prison Beds**	**Total Prison Bed Savings**
Sale	63	11	-14	21	-29	-43
Possession	163	16	-19	29	-35	-54
Total	**226**	**27**	**-33**	**50**	**-64**	**-97**

This estimate does not include possible impact of these other recommendations:
1. Proposal for Marijuana Grow Operations – No information is available on the number of plants likely to be found so no estimate can be made. Likely impact is some increase in prison beds.
2. Changes to non-felony level marijuana penalties-No impact on prison beds, some possible increase in local jail beds and supervision case loads.
3. Expansion of Conditional Release Program- Likely impact is some reduction in prison beds

A. Thresholds for Possession and Sale of Cocaine/Heroin/Meth

Statute of Conviction is M.S. §152.021 subd.2(1), §152.022 subd.1(1) or 2(1), or 152.023 subd.2(1)

Threshold and Case Information for Affected Statutes

Offense	# Cases	# With Amount Provided	Current Threshold	Proposed Threshold	# Cases With Amounts Known that Meet New Threshold
1st Possession	147	112 (76%)	25+ gr.	35-100 gr.	46 (41% of cases with known amounts)
2nd Possession	274	196 (72%)	6-25 gr.	10-<35 gr.	140 (71% of cases with known amounts)
2nd Sale	131	67 (51%)	3 gr.	5 gr.	48 (72% of cases with known amounts)
3rd Possession	277	175 (63%)	3-6 gr.	3-10 gr.	All are at least 3 gr., due to current thresholds

NOTE: Cases with amounts known to be less than the proposed threshold (as well as a like proportion of cases with amounts unknown) were moved down a degree to create the following new distribution of cases.

How Severity Levels would be Affected by Proposal

Offense	Current Severity Level	# of Cases	New Severity Level	# of Cases
1st Possession	9	147	9 8 (would drop to 2nd degree)	98 (67%) 49 (33%)
2nd Possession	8	274	8 6 (would drop to 3rd degree)	195 (71%) 79 (29%)
2nd Sale	8	131	8 6 (would drop to 3rd degree)	94 (72%) 37 (28%)
3rd Possession	6	277	6	277 100%

Distribution of Cases by Offense Type, Using Proposed Thresholds
(Shaded Lines are Cases that Change Severity Levels under Proposal)

Offense	# of Cases	Old Sev.	New Sev.	# of Current Presumptive Commits	# of New Presumptive Commits	# of Prison Sentences	# Shift to Probation	# Shorter Prison Sentence
1st Possession	98	9	9	98	98	52	0	0
2nd Possession	49	9	8	49	49	19	0	13 (27%)
2nd Possession	195	8	8	195	195	122	0	0
2nd Sale	94	8	8	94	94		0	0

3rd Sale	37	8	6	37	19	27	8 (22%)	18 (49%)
3rd Possession	79	8	6	79	25	30	11 (37%)	14 (18%)
3rd Possession	277	6	6	103	103	72	0	0
Total				524	470	295	11	27

Number of Offenders Moving to a New Severity Level
Total Estimated Prison Bed Savings of 126 Beds

Estimated Prison Beds Saved by New Severity Levels

Offense	# of Cases	Old Sev.	New Sev.	#Cases Shift to Probation	Prison Beds	# Cases Shorter Sentences	Prison Beds	Total
2nd Possession	49	9	8	0	---	13	21	21
3rd Possession	79	8	6	11	31	14	16	47
3rd Sale	37	8	6	8	22	18	36	58
Total	165			19	53	45	73	126

B. Thresholds for Possession and Sale of Marijuana

The information in the table below is based on all of marijuana sale or possession offenses sentenced in 2007: 172 sale offenses and 270 possession offenses. Of those, 66 (38%) of sale cases had known amounts, as did 78 (29%) of the possession offenses. Included in the category of cases with known amounts are cases that meet the current thresholds (based on the charging statutes), but for which no amount was specified.

Threshold and Case Information for Proposed Offenses

Offense	Current Threshold	Proposed Threshold	# Cases With Amounts Known that Meet New Threshold
1st Sale	50+ kg	12.5+ kg.	3 (6% of cases w/ known amounts)
1st Possession	100+ kg.	25+ kg.	0
2nd Sale	25-50 kg.	6kg.-<12.5 kg	6 (11% of cases w/ known amounts)
2nd Possession	50-100 kg.	12.5-<25 kg.	5 (6% of cases w/ known amounts)
3rd Sale	5-25 kg.	500 gr.-<6 kg.	6 (11% of cases w/ known amounts)
3rd Possession	10-50 kg.	1 kg. - <12.5kg.	14 (18% of cases w/ known amounts)
5th Sale	<5 kg.	<500 gr.	39 (72% of cases w/ known amounts)
5th Possession	42.5 gr-10 kg.	42.5 gr. – 1 kg.	59 (76% of cases w/ known amounts)

Number of Offenders Moving to a New Severity Level: 61
Estimated Impact: 29 Additional Prison Beds

Estimated Extra Prison Beds Needed by New Severity Levels

Offense	Total # of Cases	#Cases Shift to Prison	Prison Beds	# Cases Longer Sentences	Prison Beds	Total Prison Beds
1st Sale	2	1	+3	1	+2	+5
1st Possession	0	0	0	0	0	0
1st Total	2	1	+3	1	+2	+5
2nd Sale	4	1	+3	1	+4	+7
2nd Possession	5	2	+5	0	0	+5
2nd Total	9	3	+8	1	+4	+12
3rd Sale	20	1	+2	1	+1	+3
3rd Possession	30	3	+7	2	+2	+9
3rd Total	50	4	+9	3	+3	+12
Total	**61**	**8**	**+20**	**5**	**+9**	**+29**

Appendix P: Proposed Legislative Changes

01/16/09 REVISOR KLL/HH KLL09-02

Section 1. Minnesota Statutes 2008, section 244.055, subdivision 2, is amended to read:

Subd. 2. **Conditional release of certain nonviolent controlled substance offenders and nonviolent nondrug offenders.** An offender who has been committed to the commissioner's custody may petition the commissioner for conditional release from prison before the offender's scheduled supervised release date or target release date if:

(1) the offender is serving a sentence for violating section 152.021, subdivision 2 or 2a; 152.022, subdivision 1 or 2; 152.023; 152.024; or 152.025, or serving a sentence for a nonviolent nondrug offense;

(2) the offender committed the crime as a result of a controlled substance addiction~~, and not primarily for profit~~;

(3) the offender has served at least 36 months or one-half of the offender's term of imprisonment, whichever is less;

(4) the offender successfully completed a chemical dependency treatment program of the type described in this section while in prison;

(5) the offender has not previously been conditionally released under this section; and

(6) the offender has not within the past ten years been convicted or adjudicated delinquent for a violent crime as defined in section 609.1095 other than the current conviction for the controlled substance offense or nonviolent nondrug offense.

EFFECTIVE DATE. This section is effective August 1, 2009.

Sec. 2. Minnesota Statutes 2008, section 244.055, subdivision 3, is amended to read:

Subd. 3. **Offer of chemical dependency treatment.** The commissioner shall offer all offenders meeting the criteria described in subdivision 2, clauses (1), (2), (5), and (6), the opportunity to begin a suitable chemical dependency treatment program of the type described in this section within 160 days after the offender's term of imprisonment begins or as soon after 160 days as possible. In making the determination under subdivision 2, clause (2), that the offender has a controlled substance addiction, the commissioner shall consider the chemical dependency assessment completed at intake and that the offender is more suitable for early release, the commissioner shall consider validated risk assessment tools such as the Level of Service Inventory-Revised (LSI-R).

EFFECTIVE DATE. This section is effective August 1, 2009.

Sec. 3. **[609.3458] APPROPRIATION; ALLOCATION AND TRANSFER OF FUNDS.**

(a) At the end of each fiscal year, the commissioner of corrections shall determine the amount of savings realized from the bed savings for early release of additional offenders under section 1. The commissioner of corrections shall reallocate or transfer these saved unobligated funds as follows:

(1) 50 percent of the funds shall be allocated for additional drug treatment programs in state correctional facilities; and

(2) 50 percent of the funds shall be allocated to local corrections agencies for drug treatment programs, workhouse resources, and supervision and management of offenders.

(b) Any unobligated funds from each fiscal year realized under paragraph (a) shall not cancel but are reappropriated for the purposes of paragraph (a), clauses (1) and (2).

EFFECTIVE DATE. This section is effective August 1, 2009.

Sec. 4. **REPEALER.**

Minnesota Statutes 2008, section 244.055, subdivision 6, is repealed.

EFFECTIVE DATE. This section is effective August 1, 2009.

Section 1. Minnesota Statutes 2008, section 152.021, subdivision 1, is amended to read:

Subdivision 1. **Sale crimes.** (a) A person is guilty of controlled substance crime in the first degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; ~~or~~

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~50~~ 12.5 kilograms or more containing marijuana or Tetrahydrocannabinols~~, or one or more mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility~~; or

(5) the person unlawfully cultivates 100 or more marijuana plants regardless of weight.

(b) Paragraph (a), clause (5), does not limit the power of this state to punish a person for conduct under other laws of this state.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2008, section 152.021, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** A person is guilty of a controlled substance crime in the first degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of ~~25~~ 35 grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of ~~100~~ 25 kilograms or more containing marijuana or Tetrahydrocannabinols.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2008, section 152.022, subdivision 1, is amended to read:

Subdivision 1. **Sale crimes.** (a) A person is guilty of controlled substance crime in the second degree if:

(1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~three~~ five grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~25~~ six kilograms or more containing marijuana or Tetrahydrocannabinols;

(5) the person unlawfully sells any amount of a schedule I or II narcotic drug to a person under the age of 18, or conspires with or employs a person under the age of 18 to unlawfully sell the substance; ~~or~~

(6) the person unlawfully sells any of the following in a school zone, a park zone, a public housing zone, or a drug treatment facility:

(i) any amount of a schedule I or II narcotic drug, lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

(ii) one or more mixtures containing methamphetamine or amphetamine; or

(iii) one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols; or

(7) the person unlawfully cultivates 50 or more marijuana plants regardless of weight.

(b) Paragraph (a), clause (7), does not limit the power of this state to punish a person for conduct under other laws of this state.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2008, section 152.022, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in the second degree if:

(1) the person unlawfully possesses one or more mixtures of a total weight of ~~six~~ ten grams or more containing cocaine, heroin, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

(4) the person unlawfully possesses one or more mixtures of a total weight of ~~50~~ 12.5 kilograms or more containing marijuana or Tetrahydrocannabinols.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2008, section 152.023, subdivision 1, is amended to read:

Subdivision 1. **Sale crimes.** (a) A person is guilty of controlled substance crime in the third degree if:

(1) the person unlawfully sells one or more mixtures containing a narcotic drug;

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units;

(3) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except a schedule I or II narcotic drug, to a person under the age of 18;

(4) the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing a controlled substance listed in schedule I, II, or III, except a schedule I or II narcotic drug; ~~or~~

(5) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~five kilograms~~ 500 grams or more containing marijuana or Tetrahydrocannabinols; or

(6) the person unlawfully cultivates 25 or more marijuana plants regardless of weight.

(b) Paragraph (a), clause (6), does not limit the power of this state to punish a person for conduct under other laws of this state.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2008, section 152.023, subdivision 2, is amended to read:

Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in the third degree if:

(1) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;

(2) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units;

(4) on one or more occasions within a 90-day period the person unlawfully possesses any amount of a schedule I or II narcotic drug or five or more dosage units of lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility;

(5) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ~~ten kilograms~~ one kilogram or more containing marijuana or Tetrahydrocannabinols; or

(6) the person unlawfully possesses one or more mixtures containing methamphetamine or amphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2008, section 152.025, subdivision 1, is amended to read:

Subdivision 1. **Sale crimes.** (a) A person is guilty of controlled substance crime in the fifth degree if:

(1) the person unlawfully sells one or more mixtures containing marijuana or Tetrahydrocannabinols, except a small amount of marijuana for no remuneration; ~~or~~

(2) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV; or

(3) the person unlawfully cultivates ten or more marijuana plants regardless of weight.

(b) Paragraph (a), clause (3), does not limit the power of this state to punish a person for conduct under other laws of this state.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Section 1. Minnesota Statutes 2008, section 152.027, subdivision 4, is amended to read:

Subd. 4. **Possession or sale of small amounts of marijuana.** (a) A person who unlawfully sells a ~~small amount of marijuana~~ total weight of 14 grams or less for no remuneration, or who unlawfully possesses a ~~small amount~~ total weight of 14 grams or less of marijuana is guilty of a petty misdemeanor and participation in a drug education program unless the court enters a written finding that a drug education program is inappropriate. The program must be approved by an area mental health board with a curriculum approved by the state alcohol and drug abuse authority.

(b) A person who unlawfully sells a total weight of more than 14 grams for no remuneration, or who unlawfully possesses a total weight of more than 14 grams of marijuana is guilty of a misdemeanor and participation in a drug education program unless the court enters a written finding that a drug education program is inappropriate. The program is subject to the approval described under paragraph (a).

(c) A person convicted of an unlawful sale under paragraph (a) who is subsequently convicted of an unlawful sale under paragraph (a) within two years is guilty of a misdemeanor and shall be required to participate in a chemical dependency evaluation and treatment if so indicated by the evaluation.

~~(c)~~ (d) A person who is convicted of a petty misdemeanor under paragraph (a) who willfully and intentionally fails to comply with the sentence imposed, is guilty of a misdemeanor. Compliance with the terms of the sentence imposed before conviction under this paragraph is an absolute defense.

(e) Paragraphs (a) and (b) do not apply to the resinous form of marijuana.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 2. **REPEALER.**

Minnesota Statutes 2008, sections 152.02, subdivision 16; and 152.027, subdivision 3, are repealed.