

Impact of Proposed Controlled Substance Sentencing Modifications

Description

On November 18, 2015, the Minnesota Sentencing Guidelines Commission (MSGC) forwarded for public comment certain proposed modifications to the Minnesota Sentencing Guidelines in the area of drug sentencing. The following is an analysis by MSGC research staff of the fiscal impact of that proposal. This analysis is designed to assist the MSGC as it makes the considerations required in Minn. Stat. § 244.09, subd. 5, and is intended to replicate the standards applicable to an agency fiscal note that MSGC research staff might provide for a bill pursuant to Minn. Stat. § 3.98.

If adopted and permitted to take effect, this proposal would make the following modifications to controlled substance provisions:

1. A drug grid would be created for controlled substance offenses. First-degree sale of a controlled substance crime would be ranked at Severity Level D9 on the Drug Offender Grid, with new presumptive durations beginning at 65 months. First-degree possession of a controlled substance crime would be ranked at Severity Level D8 on the Drug Offender Grid, for which the presumptive sentences are the same as those at Severity Level 8 on the Standard Grid. Other offenses currently ranked at Severity Level 9 (e.g., first-degree manufacture of methamphetamine) would be ranked at Severity Level D10 on the Drug Offender Grid, for which the presumptive sentences are the same as those at Severity Level 9 on the Standard Grid. Second-degree controlled substance crime would be ranked at Severity Level D7 on the Drug Grid, for which the presumptive sentences are the same as those at Severity Level 7 on the Standard Grid. The drug grid would contain no changes to the existing presumptive sentences for other controlled substance-related offenses.
2. New aggravating factors would be added to the list of aggravating factors that can be cited when determining that an offense qualifies as a major controlled substance offense.
3. A new mitigating factor would be added to allow judges to impose downward dispositional departures if an offender is found to be chemically dependent.

Assumptions

The projected prison bed impact presented here is based on sentences imposed for controlled substance offenses sentenced in 2014. This analysis assumes that drug offenders sentenced in the future will resemble the drug offenders sentenced in 2014 with regard to the number of offenders sentenced at first- and second-degree.

It is assumed that offenses that received dispositional departures when sentenced would continue to do so under the proposed changes. Similarly, it is assumed that offenses that move to a severity level with lower presumptive sentences will receive the applicable presumptive sentence based on the offender's criminal history score unless the offender currently received a mitigated durational departure resulting in a sentence that is less than what the new presumptive sentence would be.

It is assumed that the modifications would take effect for offenses committed on and after August 1, 2016.

First-Degree Offenses

Under the proposal, all first-degree drug offenders would continue to have a presumptive disposition of imprisonment, and therefore none would move from a presumptive prison sentence to a presumptive probation sentence. Of the 278 offenders sentenced for first-degree offenses in 2014, 11 were sentenced for manufacture of methamphetamine and those presumptive sentences would not change. First-degree sale offenses (146 offenders in 2014) would move to a severity level with presumptive durations ranging from 64 months to 125 months, depending on criminal history score. First-degree possession offenses (121 offenders in 2014) would move to a severity level with presumptive sentences ranging from 48 months to 108 months. It is assumed that any offenders who received a mitigated dispositional departure would continue to do so in the future. Of the 267 offenders who would move to a severity level with lower presumptive durations, 105 (39%) received a mitigated dispositional departure and, thus, would not contribute to the bed savings.

It is assumed that the 162 offenders who received prison sentences would receive the presumptive duration on the proposed Drug Offender Grid corresponding to the applicable criminal history score, unless they currently received a mitigated durational departure resulting in a sentence that is less than the new presumptive sentence. Of those 162 offenders, 78 (48%) received a mitigated durational departure and 55 of those departures resulted in a sentence equal to, or less than, the sentence they would receive at the proposed severity levels and, thus, would not contribute to prison bed savings. In sum, under the provisions of this proposal, 107 of the 278 first-degree offenders sentenced in 2014 (38%) would receive a prison sentence that is less than what they received in 2014.

Second-Degree Offenses

Under this proposal, all second-degree drug offenders would move to a severity level equivalent to Severity Level 7 on the Standard Grid. At that severity level, offenders with a Criminal History Score of 0, 1, or 2 have a presumptive disposition of probation. Of the 427 offenders sentenced for a second-degree controlled substance offense in 2014, 268 were located in cells that would have a presumptive stayed sentence under the proposed Drug Offender Grid. However, any offenders who are subsequent drug offenders would continue to have a presumptive prison sentence because of the statutory mandatory minimum. Of the 268 offenders who would move to cells with a presumptive stayed sentence, 72 were subsequent offenders and therefore would continue to have a presumptive prison disposition. Of the 196 offenders, 120 received a mitigated disposition and therefore would not contribute to prison bed savings. The remaining 76 offenders would have a presumptive probation disposition. In sum, of the 427 offenders sentenced for second-degree offenses in 2014, 76 (18%) would move from presumptive prison to presumptive probation who did not already receive probation.

Of the 427 second-degree offenders sentenced in 2014, 231 would continue to have a presumptive prison sentence. Of those 231 offenders, 42 received probation and therefore would not contribute to prison bed savings. It is assumed that the 189 offenders who received prison sentences would receive the presumptive duration on the proposed Drug Offender Grid corresponding to the applicable criminal history score, unless they currently received a mitigated durational departure resulting in a sentence that is less than the new presumptive sentence. Of those 189 offenders, 70 (37%) received a mitigated durational departure and 54 of those departures resulted in a sentence equal to, or less than, the sentence they would receive at the proposed severity levels and, thus, would not contribute to prison bed savings.

In sum, of the 427 second-degree drug offenders sentenced in 2014, 76 (18%) would no longer receive a prison sentence and 135 (32%) would receive shorter prison sentences as a result of this proposal.

Estimated Prison Bed Impact

MSGC projects that the proposed modifications to the sentencing grids will eventually result in a prison bed savings of 523 beds each year: 38 beds in FY2017 and 523 beds in FY2028 and every year after. Table 1 displays the total bed savings, as well as the number of cases that shift from prison to probation, and the number of prison cases receiving shorter sentences. Tables 2 and 3 display the projected bed savings by race and ethnicity. Allowing a six-month delay for implementation, the timing of the projected bed savings is displayed in Table 4.

No estimate is made for the impact of the adoption of additional mitigating and aggravating departure factors. In 2014, five (1%) of the 434 first- and second-degree offenders who received an executed prison sentence received an aggravated durational departure. If the number of offenders receiving such a departure in the future increases, the projected prison savings could be less than that estimated here. On the other hand, if the mitigated dispositional departure rate increases, that may offset any loss in projected beds due to increases in aggravated durational departures.

Table 1: Projected Prison Bed Savings

Offense	# of Cases	# Cases No Change	# Cases Shift to Probation	Prison Beds	# Cases Shorter Sentences	Prison Beds	Total Prison Bed Savings
Meth Manufacture	11	11 (100%)	0	0	0	0	0
First-Degree-Sale	146	96 (66%)	0	0	50 (34%)	81	81
First-Degree-Poss.	121	64 (53%)	0	0	57 (47%)	81	81
First-Degree Total	278	171 (62%)	0	0	107 (38%)	162	162
Second-Degree	427	216 (51%)	76 (18%)	212	135 (32%)	148	361
Totals	705	387 (55%)	76 (11%)	212	242 (34%)	311	523

Table 2: First- and Second-Degree Cases Affected Annually, by Race and Ethnicity

Race	Total Cases	No Change	Cases Shifting to Probation	Cases With Shorter Sentences
White	423	232 (55%)	43 (10%)	148 (35%)
Black	152	93 (61%)	13 (9%)	46 (30%)
American Indian	26	14 (54%)	2 (8%)	10 (39%)
Hispanic	86	40 (47%)	17 (20%)	29 (34%)
Asian	18	8 (44%)	1 (6%)	9 (50%)
Totals	705	387 (55%)	76 (11%)	242 (34%)

Table 3: Projected Prison Bed Savings by Race and Ethnicity

Race	Total Beds, 1st & 2nd Degree Offenses*		Shift to Probation		Shorter Sentences		Total Prison Bed Savings	
	# of Beds	% of Beds	# of Beds	% of Beds	# of Beds	% of Beds	# of Beds	% of Beds
White	1,027	56%	126	24%	182	35%	308	59%
Black	462	25%	33	6%	70	13%	104	20%
American Indian	59	3%	5	1%	10	2%	15	3%
Hispanic	221	12%	45	9%	38	7%	83	16%
Asian	50	3%	2	<1%	11	2%	14	3%
Totals	1,820	100%	212	41%	311	59%	523	100%

* Estimate, calculated as ⅓ of all executed sentences, in years, pronounced in 2014.

Table 4: Timing of Projected Prison Bed Savings

Fiscal Year	Total Prison Bed Savings
2017	38
2018	108
2019	170
2020	255
2021	345
2022	391
2023	421
2024	463
2025	487
2026	506
2027	519
2028	523

Local Government Fiscal Impact

It is estimated that this proposal will result in the shifting of 76 offenders from a prison sentence to probation supervision. In 2014, the average pronounced period of probation supervision for second-degree offenders who received probation was 149 months (excluding three cases that received unusually long pronounced probation lengths). Of the 162 second-degree offenders placed on probation, 86 percent received local confinement time as a condition of felony probation with an average pronounced duration of 199 days (serve 133 days i.e., two-thirds of the pronounced duration). Thus, it is estimated that there will be an increase in probation caseloads of 76 offenders each year, and the need for 24 additional jail beds statewide each year. Table 5 displays the distribution by county of the offenders sentenced in 2014 who would shift to probation under this proposal. It is meant to be illustrative, rather than predictive as the number of offenders sentenced in a particular county for second-degree offenses with the applicable criminal history scores is likely to vary from year to year.

Table 5: Distribution of Offenders Moving From Prison to Probation by County

County	Number	Percent
Anoka	2	2.6
Beltrami	3	3.9
Benton	1	1.3
Blue Earth	1	1.3
Brown	1	1.3
Chisago	1	1.3
Clay	1	1.3
Clearwater	1	1.3
Crow Wing	1	1.3
Dakota	3	3.9
Douglas	2	2.6
Faribault	2	2.6
Freeborn	1	1.3
Goodhue	1	1.3
Hennepin	11	14.5
Isanti	4	5.3
Itasca	1	1.3
Kandiyohi	2	2.6
Lyon	1	1.3
McLeod	2	2.6
Martin	1	1.3
Meeker	1	1.3
Mower	3	3.9
Olmsted	5	6.6
Polk	4	5.3
Ramsey	6	7.9
Redwood	1	1.3
Renville	1	1.3
St. Louis	3	3.9
Scott	1	1.3
Stearns	3	3.9
Steele	1	1.3
Todd	1	1.3
Washington	1	1.3
Watonwan	2	2.6
Total	76	100.0