

Attached is a draft of my drug law and sentencing proposal. The things I was trying to incorporate were:

- 1) Removing sale language in first and second degree cases. The offense would be possession with intent to distribute based on the amount. There would be a higher threshold for simple possession.
- 2) Amount thresholds that reflect the differences in lethality of the substances (i.e. less heroin than cocaine to make a first degree case).
- 3) Amount thresholds that are more comparable to similar states.
- 4) Better utilizing 4th degree offenses for small time distributors who are likely users themselves.
- 5) Making possession or use of small amounts (including the trace cases which are only charged in some districts and not others) a gross misdemeanor to reduce the prison beds used for the many revocations in those cases. They are clearly users who do not belong in prison even when unsuccessful on probation.
- 6) Eliminate the mandatory minimums as they pertain to subsequent offenses involving 4th and 5th Degree Controlled substance crimes as predicates and current offenses.
- 6) The use of border boxes for first and second degree offenders with 0 or 1 point and adding a list of mitigating factors to consider when opting for probation and aggravating factors when opting for prison. These aggravating factors would also apply to upward durational departures replacing the "king pin" statute.

PROPOSED DRUG THRESHOLDS

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Offense	Current MN law	Current Guidelines Level	Proposed new threshold For Possession with intent to distribute/ possession	Proposed Guidelines level
1st Degree Sale/Possession	10/25 gr. cocaine, meth	9	50/75 gr. Cocaine, meth	9
	10/25 gr. Heroin		10/15 gr. Heroin	
	50/500 other narcotics, amphetamines		500/600 gr. other narcotics/ amphetamines	
	200/500 dosage units		300/400 dosage units	
	50/100 kilos marijuana		100/150 kilos marijuana	
2nd Degree Sale/Possession	3/6 gr. Cocaine, meth	8	10-50/50-75 gr. Cocaine, meth	8
	6/6 gr. Heroin		6- 10/10-15 gr. Heroin	
	10/50 other narcotics/amphetamines		50-500/ 100-600 gr. Other narcotics/ amphetamines	
	50 dosage units		50-299/100-599 dosage units	
	25/50 kilos marijuana		25-100/50-150 kilos marijuana	
3rd Degree Sale/	Any amt/ 3 gr. Cocaine, meth	6	1-10 / 3-50 gr. Cocaine,	7

Possession			meth	
	Any amt/ 3 gr. Heroin		1-6 /3-10 gr. Heroin	
	10 dosage units hallucinogen/50 dosage units		10-49 /50-100 dosage units hallucinogen or amphetamines	
	Any amt other sched 1,2 or 3 Or to someone or employing someone under 18/ 10 gr. other narcotics		Same/ 10-49 gr. other narcotics	
	Any amt of narcotic in a school, park, public housing or treatment zone		Same	
	5 kilos/ 10 kilos marijuana		1-5 kilos/ 5-25 kilos marijuana	
4th Degree	Sale of any amt sched 1,2,3	4	Any amt/ Less than 3 gr. cocaine, meth, heroin (Must be measurable amt)	4
	Sale of any amt sched 4,5 to someone or employing someone under 18		Same	
	Sale of any amt of marijuana in a school, park, public housing or treatment zone		Same	

	Possess 10 or more dosage units of hallucinogen or any schedule 1,2,3 with intent to sell		Same	
5th Degree	Sale of marijuana or schedule 4 drug	2		GM
	Possession of any amt schedule 1-4 except marijuana		Trace amounts	GM
	Procures controlled sub by fraud, false name or title		Add to 4 th degree	

Guidelines Grid for Drugs

Offense	0	1	2	3	4	5	6 or more
1st Degree drugs	86	98	110	122	134	146	158
2nd Degree drugs	48	58	68	78	88	98	108
3rd Degree drugs	36	42	48	54	60	66	72
4th Degree drugs	12-1	15	18	21	24	27	30
5th Degree drugs	GM						

Border Box denoted with angled lines leaves the disposition to the discretion of the district court judge. White denotes a presumptive prison sentence and gray denotes probation. Dark gray would be a gross misdemeanor.

Mitigating Factors for Drug Offenses

- the defendant played a minor or passive role in the commission of the offense
- the defendant acted at the direction of another who was reducing their own exposure to detection
- the defendant's actions were significantly influenced by physical, emotional or financial duress
- the defendant was not intended to receive direct financial gain from participation in the crime
- the defendant lacked full knowledge of the offense
- the defendant has a chemical dependency problem that contributed to their participation in the offense
- the defendant lacks criminal contacts

Aggravating Factors for Drug Offenses

- the defendant possessed a firearm during or related to the commission of the offense
- the defendant has a conviction for a prior crime of violence per 609.11
- the defendant acted for the benefit of a gang
- the offense involved importation of drugs from outside the state of Minnesota
- the offense involved acts/transactions in 3 separate counties
- the defendant possessed stolen property
- the defendant possessed distribution or customer lists

- the defendant possessed cash, packaging materials and equipment, electronics (including but not limited to multiple cell phones) or security measures indicative of an organized business operation
- evidence of modification of a building or device to facilitate the cultivation, manufacture or hiding of a controlled substance
- the offense(s) involved minors, vulnerable adults, schools, parks, public housing, treatment facilities
- the defendant acted from a position of trust