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**Minnesota County Attorneys Association  
Position Paper Concerning Drug Offender Sentencing**

Adopted by the MCAA Board of Directors: December 5, 2012

**Introduction**

The manufacture, distribution and use of illegal drugs are some of the most overwhelming problems facing our state and nation. Minnesota County Attorneys routinely witness the harmful effects of drug abuse and illegal drug trafficking on our society in terms of violence, crime, child abuse and neglect. These harmful effects adversely impact citizens of our state irrespective of whether they live in urban, suburban, or rural areas and result in significant statewide costs to our health care, social service and criminal justice systems. In 2011, law enforcement officers assigned to multijurisdictional narcotic and violent crime task forces operating throughout our state made 3,522 arrests for narcotics violations.<sup>1</sup> In the course of their investigations officers seized 18 methamphetamine labs, 50 pounds of cocaine/crack, 100 pounds of methamphetamine, 8.5 pounds of heroin, 2,092 dosage units of ecstasy, over 10,000 dosage units of prescription drugs, 6,038 pounds of marijuana and 5,320 cultivated marijuana plants.<sup>2</sup>

Minnesota County Attorneys recognize that the causes of drug abuse are many and that those who unlawfully traffic drugs are constantly creating new methods of manufacturing and distribution. In attempting to address illegal drug activity, Minnesota County Attorneys have learned that such activity can vary from community to community in terms of the prevalence of a particular drug and methods of manufacturing and distribution. The multiple causes of drug abuse and the ever-evolving nature of illegal drug trafficking, require a multifaceted approach that includes aggressive enforcement of laws pertaining to illegal drug trafficking, as well as support of efforts related to treatment and prevention which are necessary for the drug problem to be effectively addressed. It is therefore important that those involved in all branches of government continue to explore new methods and procedures to address the state's drug problem.

The Minnesota County Attorneys Association supports legislation and funding for the expansion drug awareness education, chemical dependency and mental health evaluation, and chemical dependency treatment programs. The Association also supports the expansion of drug courts and other problem solving courts that are designed to more effectively address the underlying causes of drug abuse. However, while such methods are important components in combating the demand for illegal drugs, the Association also believes that effective prevention efforts also

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<sup>1</sup> There are currently 23 violent and drug crime task forces covering 65 Minnesota counties.

<sup>2</sup> "Drug and Violent Crime Task Forces -- 2012 Annual Report", Office of Justice Programs—Minnesota Department of Public Safety.

require criminal laws and sentences be maintained that appropriately punish those who illegally supply, manufacture and distribute drugs in our communities. Treatment, counseling and drug courts are not appropriate for those offenders who are involved in the manufacture and distribution of controlled substances for monetary profit or offenders who use dangerous weapons or engage in violent behavior to promote, expand or protect their illegal drug operations. Any changes to existing drug laws that would reduce the severity of sentences for serious and dangerous drug offenders would adversely impact the state's interest in pursuing justice and promoting public safety and fails to recognize that those who knowingly manufacture or distribute illegal drugs are personally responsible for their actions and should be held appropriately accountable for their criminal behavior and its widespread negative impact on our communities.

**1. The current presumptive sentences for first and second degree drug offenses provide an appropriate level of accountability for the most dangerous drug offenders, deter future violent criminal activity, and promote public safety.**

In Minnesota, first and second degree drug offenders are presumed to be involved in the manufacture or distribution of large quantities of drugs or are in the possession of quantities of illegal drugs in amounts that would suggest the offender is a significant player in the illegal drug trade. To further their operations such offenders often resort to violence and possess firearms and other dangerous weapons to collect debts, intimidate competing drug dealers, or to protect their inventory and profits from "drug rip-offs." This is exemplified by the fact that in 2011 Minnesota law enforcement officers associated with drug task forces seized over 600 firearms and other dangerous weapons during the course of their investigations.<sup>3</sup>

Many first and second degree drug offenders are associated with local gang activity and some are associated with international drug cartels. In its 2007 report on illegal drug activity in Minnesota, the United States Drug Enforcement Administration (DEA) stated:

In Minnesota, Mexican traffickers control the transportation, distribution, and bulk sales of cocaine, marijuana, methamphetamine, and small amounts of black-tar heroin. Numerous Mexican groups and street gangs such as the Latin Kings are operating in the state. As a general rule, the upper echelon Mexican distributors in Minnesota transport the majority of their proceeds back to family members residing in Mexico. At the retail level, independent African American traffickers, African American street gangs, Native American gangs, and independent Caucasian groups purchase cocaine, black-tar heroin, and marijuana from Mexican traffickers.<sup>4</sup>

In its 2012 annual report on gang related activity the Minnesota Department of Public Safety confirmed the significant and ongoing involvement of gangs in the sale and distribution of narcotics.<sup>5</sup>

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<sup>3</sup> Drug and Violent Crime Task Forces -- 2012 Annual Report", Office of Justice Programs—Minnesota Department of Public Safety.

<sup>4</sup> 2007 United States Drug Enforcement Administration Minnesota Drug Assessment Report.

<sup>5</sup> "Drug and Violent Crime Task Forces -- 2012 Annual Report", Office of Justice Programs—Minnesota Department of Public Safety.

The connection between illegal drugs and violence is not limited to the distribution or possession of cocaine, methamphetamine, or heroin. There is ample evidence to demonstrate a significant link between illegal drug activity and numerous other violent crimes that are not directly related to drug trafficking, but which are directly influenced by the use of illegal drugs. In Minnesota, assaults and other violent acts are also associated with the distribution or possession of what many mistakenly perceived as less dangerous drugs such as marijuana. The victim may be the bank teller, storeowner, or home owner who is burglarized, robbed, assaulted, or killed by the drug abuser to obtain money for his or her next drug “fix”. The victim may also be a family member who is assaulted by the drug abuser during a drug-induced rage or a child who is present in a residence or playing in a park where illegal drugs are manufactured or sold. The United States Department of Justice, Bureau of Justice Statistics, concluded that approximately fifty percent (50%) of all state and federal violent offenders (e.g. homicide, assault, sexual assault, robbery, etc.) reported using drugs within one month of the commission of the violent offense and approximately twenty-five (25%) of all violent offenders reported that they had used drugs at the time they committed the violent offense.<sup>6</sup>

Many drug offenders sentenced to Minnesota adult correctional facilities have a prior history of criminal behavior. In a recent review of inmate profiles by the Minnesota Department of Corrections reported on July 1, 2010 revealed that over seventy-five percent (75%) of inmates serving a drug sentence in state correctional facilities had prior felony convictions. The average number of prior felony convictions per drug offender was three (3). Forty-two percent (42%) have previously served a prison sentence in an adult correctional facility.

Minnesota County Attorneys believe that the first priority of any state legislation or policy should be protection of the public. Any reduction in the severity of potential sentencing of first and second degree drug offenders or reducing mandatory minimum sentences for repeat drug offenders is contrary to the interest of protecting the safety of Minnesota’s citizens. Minnesota County Attorneys believe that state legislation and policy must provide for lengthy prison sentences with mandatory minimum terms of imprisonment for those who use firearms or engage in violent behavior to promote, expand, or protect their illegal drug operations, or who repeatedly engage in illegal drug activity or other criminal behavior. Such sanctions insure accountability, deter future violent criminal activity, and promote public safety. State legislation and policy must appropriately acknowledge the dangerous and violent nature of illegal drug activity and its significance as a contributing factor in many other crimes of violence and property offenses. The current ranking of first and second degree controlled substance crimes under the Minnesota Sentencing Guidelines at the same level of crimes involving great bodily harm, aggravated robbery, criminal sexual conduct and serious assault provides this acknowledgement.

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

The current thresholds for first and second degree drug offenders properly reflect the Legislature’s belief that those who possess or distribute drugs in these quantities are presumed to be engaged in major drug trafficking. It is not uncommon for first and second degree drug offenders to manufacture,

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<sup>6</sup> Bureau of Justice Statistics, Special Report, “Drug Use and Dependence, State and Federal Prisoners, 2004”, published in October 2006

distribute, or purchase large quantities of drugs with street values in the hundreds of thousands of dollars. These sales result in the entrepreneurial drug dealer receiving profits in the thousands, and in some cases millions of dollars. When a person engages in criminal activity that has a widespread negative impact on a community for profit, it is appropriate for that the offender is subjected to a sanction that acknowledges the significant adverse effect of the illegal activity on the community. The manufacture and distribution of drugs are unlawful enterprises whose operations result in widespread and long term negative impacts on society.

The large profits to be gained in drug trafficking lead drug dealing entrepreneurs to invest thousands of dollars in support or expansion of their illegal activities. For example, in recent years metro area law enforcement officers have discovered multiple marijuana grow operations in several suburban neighborhoods. In each of these operations law enforcement officers located thousands of marijuana plants capable of producing marijuana with street values in the millions of dollars. These grow operations involved the purchase of upscale homes in suburban neighborhoods. Once purchased marijuana entrepreneurs spend thousands of dollars constructing sophisticated heating, irrigation, and ventilation systems inside the homes to support the grow operation. Electrical systems are rewired to bypass meters to avoid detection and experienced marijuana growers are brought in from other countries to oversee the operations.

Minnesota County Attorneys believe lengthy sentences for repeat and entrepreneurial drug dealers are important and necessary. Such sanctions significantly disrupt illegal operations and have a deterrent effect by increasing the potential “costs” of doing business for the drug dealer. Therefore, the Association believes that the current ranking of first and second degree offenders under the Minnesota Sentencing Guidelines is appropriate as it provides for longer sentences for offenders whose incarceration will either have a deterrent effect or where incapacitation is required to prevent a high likelihood of return to the drug trade.

### **3. Minnesota does not treat drug offenders more harshly than other states.**

The Minnesota Sentencing Guidelines Commission recently reported that twenty-five percent (25%) of convicted drug offenders are sentenced to prison with the remainder serving time in local correctional facilities (62%) or no time of incarceration (14%).<sup>7</sup> However, the overall percentage of offenders receiving a prison sentence is not necessarily reflective of the harshness in which drug offenders are sentenced in Minnesota. In the vast majority of cases the imposition and length of a prison sentence is the result of a plea negation or sentence that is substantially less than the presumptive sentence. In other cases the sentence may be at the request of the offender to avoid the imposition of lengthy probation terms, incarceration in local correctional facilities, fines, treatment, and other conditions commonly associated with probationary sentences. In many cases, a drug offender may be sentenced on multiple drug and non-drug offenses and the drug offense is not the “governing” offense in determining the actual length of the offender’s sentence. The Minnesota Department of Corrections recently reported that only 18% of inmates in state correctional facilities are serving a sentence where

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<sup>7</sup> “Sentencing Practices-Controlled Substance Offenses Sentenced in 2010”- Minnesota Sentencing Guidelines Commission-April 2012.

the “governing” offense involved the sale, manufacture or possession with intent to distribute, or the possession of drugs.<sup>8</sup>

In terms of the severity of prison sentences, recent studies have demonstrated that Minnesota does not sentence drug offenders to harsher sentences than other states. At the time of sentencing a judge imposing a prison sentence will specify a specified number of months the drug offender is to serve in prison. However, a drug offender sentenced to prison will be eligible for supervised release upon serving two-thirds of the pronounced sentence provided the offender commits no disciplinary offense while in prison. In addition to supervised release, in recent years, the Legislature and the Minnesota Department of Corrections have established early release programs that allow drug offenders to be released from prison prior to the expiration of their sentence (changes which were supported by Minnesota County Attorneys).<sup>9</sup> Therefore, the actual time served by drug offenders in most cases is significantly less than the time imposed by a judge at the time of sentencing. In a recent nationwide analysis of offenders released from prison it was determined that drug offenders sentenced to a state correctional facility will serve an average sentence of 2.2 years. Similarly, this same analysis determined that the average length of incarceration for drug offenders in Minnesota was also 2.2 years.<sup>10</sup>

**4. High mitigated dispositional and durational departure rates for presumptive prison drug offenders is a recognition that illegal drug activity is often the result of chemical addiction and varying degrees of offender culpability and do not reflect widespread dissatisfaction with current presumptive sentences for drug offenders.**

In Minnesota, by statutory definition, the severity of drug offenses in most cases is determined by the quantity of drugs seized during the course of an investigation.<sup>11</sup> The thresholds for first and second degree drug offenders reflect the Legislature’s belief that those who possess or distribute drugs in these quantities are presumed to be engaged large scale drug trafficking. Minnesota County Attorneys agree with the legislative presumption that those involved in first and second degree drug offenses are typically engaged in large scale drug trafficking.

High mitigated disposition and durational departure rates for first and second degree drug offenders in Minnesota are a product of the discretion the state legislature has appropriately afforded prosecutors and judges and should not be considered as an expression of criminal justice professionals displeasure with the Legislature’s presumption that such drug offenders are involved in large scale drug trafficking.

Minnesota County Attorneys believe however, that not all drug traffickers should be treated identically and that the quantity of drug seized, while creating a valid presumption, is not always an indicator of

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<sup>8</sup> “Backgrounder—Drug Offenders in Prison” -- Minnesota Department of Corrections --February 2011. “Sentencing Practices-Controlled Substance Offenses Sentenced in 2010”- Minnesota Sentencing Guidelines Commission-April 2012.

<sup>9</sup> See, e.g., Minn. Stat. Section 244.055 providing for early release from prison after serving one-half of the ordered prison sentence, or 36 months, whichever ever is less, for certain controlled substance crimes, if a drug treatment program is completed. The Association supports legislation and policy that would allow appropriate offenders to earn “good time” credit or early release by participating in and completing treatment and related programming. Any funds saved in the reduction of drug sentences through programs allowing early release from prison upon completing treatment should be utilized for additional treatment and re-entry programs.

<sup>10</sup> “Time Served: The High Cost, Low Return of Longer Prison Terms”, Pew Center of the States, June 2012.

<sup>11</sup> See, Minnesota Statutes, Chapter 152.

the culpability or dangerousness of a drug offender. The drug offender may be one who distributes not for profit, but to support their addiction. Many chemically addicted drug offenders also suffer from coexisting mental illnesses or disorders. Others become involved in drug manufacturing or distribute to appease peers or family members. Many such offenders are amenable to treatment or probation. Therefore, irrespective of the amount of drugs seized, when charging, negotiating, or sentencing a drug case an appropriate amount of discretion is necessary. It is important to take into consideration other facts such as the offender's prior criminal history, the drug offenders motivation (profit or addiction), the size of the illegal drug operation, the offender's position in the drug hierarchy, sophistication of operations, the use of dangerous weapons, the offender's propensity for violence, the level of the offender's role in the operation, or his/her cooperation with law enforcement in deciding a convicted drug offender's sentence. While difficulty may exist in attempting to identify which of those considerations should be applied in a given case and how much weight should be afforded to each factor, it is proper to rest such discretion in our elected professionals in the criminal justice system, i.e., prosecutors and judges. The fact that a significant number of downward departures occur in this area does not, therefore, necessarily mean the system needs to be fixed.

Minnesota County Attorneys exercise their discretion in charging drug offenders with lower threshold crimes if warranted based upon the evidence available or if an offender chooses to cooperate with a criminal investigation. Prosecutors also exercise their discretion in appropriate cases by agreeing to downward departures or a cap on the prison sentence when appropriate. Judges also have broad discretion to allow for mitigated dispositional and durational departures at the time of sentencing when warranted by the facts and circumstances of an individual case and offender. As a result judges, like prosecutors during negotiations, will consider dispositions calling for mitigated dispositional or durational departures based upon factors not delineated in the drug statute. The fact that valid reasons may exist to support mitigated sentencing departures in many drug cases is not a reflection that the current ranking of drug offenses by the Minnesota Sentencing Guidelines Commission is inappropriate.

**5. At sentencing, placing the burden on the defendant to demonstrate substantial and compelling reasons that a mitigated dispositional or durational sentence departure is appropriate.**

In Minnesota, first and second degree drug offenders are presumed to be engaged in drug trafficking and as a result face a presumptive prison sentence of 86 months or 48 months, respectively (assuming a zero criminal history score). The presumptive prison sentences under current rankings confirm the state's recognition of the seriousness of first and second degree drug offenses and the state's appropriate commitment to protecting public safety.

Minnesota Sentencing Guidelines mandate the imposition of the presumptive sentence absent a finding by the court that substantial and compelling reasons exist to impose a mitigated or aggravated sentence. Under current severity level rankings, the burden is on the convicted drug offender to identify to the court at sentencing why he should be treated more leniently than the typical first or second degree offender. For example, the offender may offer evidence that he played a minor role in the illegal drug activity, that the illegal acts were motivated by an addiction to drugs, or that he is amenable to probation/treatment. The current presumptive sentences appropriately place the burden on the convicted drug offender to demonstrate to the court why they are amenable to a probation

sentence or participation in the underlying offense was minimal. This burden of proof should **not** be changed.

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

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

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

Minnesota County Attorneys believe there is no one single treatment model that will successfully address every offender's drug use or addiction problems. Often a drug offender's mental and physical health concerns, poor economic condition, or lack of family and peer support complicates successful treatment programming. Also, the type of drug being used may require a different type of treatment program for different individuals. Methamphetamine, for example, is a drug that requires intensive long-term treatment.

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

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

State legislation and policy should encourage collaborative efforts between government agencies and community members that improve the quality of life and increase community awareness of the dangers of illegal drug activity. For example, drug court initiatives have gained the support of the Minnesota Legislature, Minnesota Judicial Council and other criminal justice professionals throughout the state and as a result Minnesota has begun to follow this nationwide trend. Significant state and local

financial and other resources have been expended to support existing drug courts and encourage the development of additional drug courts throughout the state. Minnesota County Attorneys support the continued use and expansion of drug courts as a means to address a drug offender's chemical dependency and related issues. Minnesota County Attorneys also support other programs that improve the quality of life in a community and increase awareness of the dangers of drugs which have demonstrated effectiveness in reducing drug use. Such evidence based programs should be promoted and adequately funded. The Association also supports collaborative efforts such as Neighborhood Watch, "Weed and Seed", and other programs that bring government agencies and community members together to improve the overall quality of life and increase community awareness as to the dangers of drug abuse.

**9. Local units of government already dedicate a significant portion of financial and other resources to preventing illegal drug activity. Reducing the rank of all first and second degree drug offenses would inappropriately increase this burden.**

The unlawful manufacture, distribution, and use of controlled substances are statewide problems. Illegal drug activity and its negative impact have no boundaries. Approximately seventy-five percent (75%) of convicted drug offenders are sentenced to probation terms. As a result local governments are already required to dedicate a significant portion of financial and other resources to the investigation, prosecution, incarceration, and treatment of drug offenders. In addition, social service agencies of counties are often required to provide services to families and others affected by drugs. The ability of local units of government to dedicate resources to appropriately address the drug problem is limited and varies widely from jurisdiction to jurisdiction. Minnesota County Attorneys believe that costs associated with combating, treating, monitoring and incarcerating drug offenders should be primarily borne by the state and not local units of government. In addition, based on the high rates of recidivism of drug offenders, there will be additional burdens placed on local government when these offenders commit new crimes, which would not have occurred but for their reduced time in prison and placement in the community. Consequently, the Association opposes any effort to reduce the current ranking of first and second degree drug offenses under the Minnesota Sentencing Guidelines.

## **Conclusion**

For all of the reasons articulated in this position paper, the Minnesota County Attorneys Association opposes any changes to the current sentencing practices that would result in a reduction of the severity of presumptive sentences for convicted drug offenders. We believe such changes would adversely impact public safety, would reduce the ability of our system of criminal justice to hold serious and repeat drug offenders appropriately accountable and would inappropriately shift costs of dealing with many illegal drug offenders to county government. Minnesota County Attorneys do, however, support efforts to explore new methods and procedures to address drug abuse, such as drug courts, which do not adversely impact public safety. If further review of Minnesota's current drug laws and sentencing structure is to occur, such review should not occur solely before the Minnesota Sentencing Guidelines Commission, but should be done through a legislative commission comprised of representatives of those working in the criminal justice systems and citizens.