

DRUG SENTENCING REFORM CHECKLIST

A. Objective criteria for probation

1. Currently, in many situations the district court cannot order probation to send an addict to drug court without dispositionally departing from the Guidelines. This is due to mandatory minimums for drug offenses and the severity levels for first- and second degree controlled substance offenses. To avoid this the mandatory minimums for drug offenses would need to be repealed and the MSGC would need to create border-boxes to the current sentencing grid or create a separate drug sentencing grid.
2. A border-box creates a separate box to the side of the grid that would apply to a specific severity level. For example, the MSGC could create a border-box attached to severity level 9. That box would allow a judge to order probation for all offenses in severity level 9. The problem is that the border-box would also allow the judge to order probation to all crimes in severity level 9—such as first-degree assault.
3. An easier fix would be for the MSGC to create a separate sentencing grid for all drug offenses. In my view, this approach has the virtue of having a separate grid for drug offenses, and allows the Commission to tailor-make the grid for drug offenses. Currently, we have a separate sentencing grid for criminal sexual conduct cases.

B. Objective criteria for differentiation between chemically dependent, distributor and dealer.

1. Drug testing within two weeks of time of arrest to qualify for drug court.
2. Increase threshold amounts and severity levels within first-degree to differentiate between low-level, mid-level and king-pin dealer with graduated higher presumptive sentences.
3. Separate drug sentencing grid to allow judicial discretion to order probation and drug court in certain cases.
4. Additional aggravating factors. See HF 2107.
5. Additional mitigating factor that judge finding that defendant is chemically dependent, and is willing and able to participate in drug court. The finding of chemical dependency must be based upon a positive drug test within two weeks of arrest, and other indicia of chemical dependency such as prior record or drug treatment.