

Change 23:
Recommend
eliminating or
changing drug
mandatory
minimums (two
alternatives)

Recommendations to the Legislature

The Legislature invites the Minnesota Sentencing Guidelines Commission to provide it, from time to time, with recommendations regarding changes to criminal law, criminal procedure, and other aspects of sentencing.²⁹ The Commission makes the following recommendations to the legislature:

Recommendation One. The Commission recommends, first, that the Legislature repeal the mandatory minimum sentencing provisions in Chapter 152, Minnesota Statutes. This will complement the Commission’s proposed modifications to the Guidelines relating to sentencing of drug offenses and give the courts and prosecutors more discretion on the appropriate sentence for individual defendants.

[OR] Recommendation One. The Commission recommends, first, that the Legislature remove Controlled Substance Crime in the Fifth Degree – Possession from the list of offenses for which a subsequent controlled substance conviction will trigger a mandatory minimum sentence.

Discussion: The trace and small amount possession cases charged as 5th degree possession (not sale) are most commonly the result of addicts being caught while or immediately after using a controlled substance thus resulting in the trace amount of burnt residue in a pipe or similar. The definition of subsequent controlled substance conviction is used in the penalty subdivision of 1st – 5th degree controlled substance crimes. A prior trace or 5th degree case currently can be used to create a 4 year mandatory minimum sentence for a subsequent 1st degree case, 3 year mandatory minimum on a subsequent 2nd degree case, 2 year mandatory minimum on a subsequent 3rd degree case, 1 year mandatory minimum for a subsequent 4th degree case and 180 days mandatory minimum on a subsequent 5th degree case. These mandatory prison sentences serve as a bar to participation in a drug or treatment court. If the model moving forward is to encourage treatment of addiction, these mandatory minimums are a major hindrance.

Recommended Statutory Language: Minn. Stat. § 152.01, subd. 16a, would be amended to read, “Subsequent controlled substance conviction. Notwithstanding section 152.18, subdivision 1, a ‘subsequent controlled substance conviction’ means that before commission of the offense for which the person is convicted under this chapter, the person received a disposition for a felony-level offense violation of this chapter, excluding a violation of section 152.025, subdivision 2, under section 152.18, subdivision 1, was convicted in Minnesota of a felony violation of this chapter, excluding a violation of section 152.025, subdivision 2, or a felony-level attempt or conspiracy to violate this chapter, excluding section 152.025, subdivision 2, or was convicted elsewhere for conduct that would have been a felony under this chapter, excluding section 152.025, subdivision 2, if committed in Minnesota. An earlier disposition for a

²⁹ Minn. Stat. § [244.09, subd. 6](#).

felony-level offense under section 152.18, subdivision 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence or stay of adjudication.”

Recommendation Two. The Commission recommends, second, that the Legislature reduce Controlled Substance Crime in the Fifth Degree – Possession, Minn. Stat. § 152.025, subd. 2, in a case involving possession of a trace amount of a controlled substance, to a gross misdemeanor rather than a felony.

[OR] **Recommendation Two.** The Commission recommends, second, that the Legislature amend Controlled Substance Crime in the Fifth Degree to add a to a gross misdemeanor offense for trace amounts of a controlled substance.

Discussion: Trace cases are prosecuted inconsistently across the state. Some jurisdictions do not prosecute any trace amount cases, while other jurisdictions charge them zealously and impose mandatory minimum periods for subsequent offenses. This creates an onerous sentence for defendants who are very likely addicts and would receive no criminal intervention if they committed the offense in a different county. Because these are considered low-level offenses, few probation resources are allocated to these offenders who with frequency either fail on probation and are revoked or grow so frustrated with probation violations that they opt for execution of their sentence. These offenders are often committed to the custody of the Commissioner of Corrections for periods too short to allow for chemical dependency services within the Department of Corrections. By treating these cases as gross misdemeanors, we eliminate the possibility of a prison commit for a trace amount of drugs and we blunt the inequity across district and county lines. In fiscal year 2015, the DOC had 501 inmates serving sentences for 5th Degree Controlled Substance crimes. The DOC would see a decrease in short-term beds and supervised-release clients. County corrections programs may see an increase in local incarceration, though the typical 180-day mandatory minimum is already being served locally.

Recommended Statutory Language:

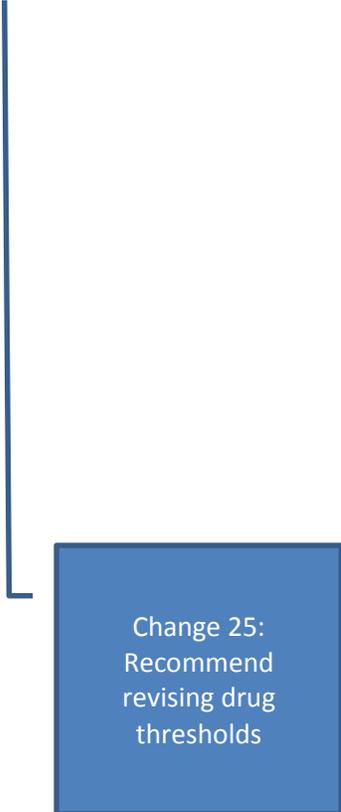
Minn. Stat. § 152.025, subd. 2 (Controlled Substance Crime in the Fifth Degree – Possession), subpart (1), would be amended to read, in part, “the person unlawfully possesses a measurable amount but less than 3 grams of one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana”

A new subdivision would be added to Minn. Stat. § 152.025:

“Subd. 3. **Possession of trace amounts.** A person is guilty of a controlled substance crime in the fifth degree and if convicted may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the person unlawfully possesses a trace amount but less than 3 grams of one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana.”

To retain county attorney jurisdiction, Minn. Stat. § 388.051, subd. 2(c) would be amended to read, "The county attorney shall prosecute failure to report physical or sexual child abuse or neglect as provided under section 626.556, subdivision 6, violations of fifth-degree criminal sexual conduct under section 609.3451, and environmental law violations under sections 115.071, 299F.098, and 609.671, and controlled substance crime in the fifth degree, possession of trace amounts, as provided under section 152.025, subdivision 3."

Recommendation Three. The Commission recommends, third, that the Legislature revise quantity thresholds for controlled substance crimes so that the different degrees fairly distinguish between major, mid-level, and low-level drug wholesalers.



Change 25:
Recommend
revising drug
thresholds