



Finding the right balance for punishing, treating drug offenders

Minnesota law keeps some out of prison, but gets tougher on dealers

by Minnesota Rep. Tony Cornish (rep.tony.cornish@house.mn)

Minnesota lawmakers faced an unusual situation this session, watching as new drug-sentencing guidelines were set to become law even though the Legislature had nothing to do with their crafting.

In 1978, the House and Senate agreed to cede some of their lawmaking power to the Minnesota Sentencing Guidelines Commission. Under this agreement, commission appointees can make recommendations regarding criminal sentencing and, unless the full Legislature changes those guidelines or rejects them completely, they become law on Aug. 1 of that year.

Facing a nearly 500-bed shortage in our prisons, and feeling the itch to reform state laws relating to illegal drug sales and usage, the commission issued a series of new drug-sentencing guidelines.

In my opinion, its proposals were far too lenient — especially for first-degree and first-time drug offenders. Many agreed, as the law enforcement, county attorney and victim representatives on the panel voted “no” on the recommendations. But they were outnumbered. So the plan was controversial from the start.

Drug-law reform has broad support

To me it appeared the commission was attempting to keep people out of prison in order to save the state money, which is the wrong reason to change criminal sentences. Yet there was support not only within both parties of the Minnesota legislature, but also among county attorneys, law enforcement agencies and citizen advocacy groups, to reform how our state addresses drug crimes.

With that in mind, we all chose to hammer out an agreement we could live with before our legislative session ended — and before the commission’s recommendations became law.

During the weeks of negotiations, tempers flared, arguments were plentiful, and people left the room in anger. But the overwhelming goal was to make prison sentences tougher for drug dealers while providing treatment for the low-level, chemically dependent offender. Days before lawmakers were required to adjourn, we did just that.

Under our old laws, if you committed a drug crime, you received a mandatory sentence regardless of its severity. According to Minnesota’s new law, judges have the ability to depart from the sentencing guidelines on lesser-degree drug crimes. Also, a judge is only required to assign a binding penalty if the criminal had committed an identical first- or second-degree offense.

However, when it comes to “kingpin” dealers who are in possession of or selling mass amounts of illegal substances, we are not only delivering a mandatory sentence but also giving the judge the discretion to make it tougher if he or she deems it necessary. The new law also mandates that a judge cannot alter the sentence if the offense involves drugs and firearms.

In addition, we addressed the amount of drugs

Minnesota’s sentencing guidelines for sale, possession of drugs		
Criminal charge	Current sentencing guidelines, as of Aug. 1 (description of the type of sale or possession)	Previous sentencing guidelines
First-degree sale*	65 months in prison (for sale of 17 grams or the sale of 10 grams with a firearm or two other “factors”)**	86 months in prison (for sale of 10 grams)
First-degree possession*	65 months in prison (for possession of 50 grams, or 25 grams with firearm or two other “factors”)**	86 months in prison (for possession of 25 grams)
Second-degree sale*	48 months of probation (for sale of 10 grams, or 3 grams with firearm or three other factors)**	48 months in prison (for sale of 3 grams)
Second-degree possession*	48 months of probation (for possession of 25 grams, or 6 grams with firearm or three other “factors”)**	48 months in prison (for possession of 6 grams)
First-degree marijuana sale	65 months in prison (for sale of 25 kilograms)	86 months in prison (for sale of 50 kilograms)
First-degree marijuana possession	65 months in prison (for possession of 50 kilograms or 500 plants)	86 months in prison (for possession of 100 kilograms)
Second-degree marijuana sale	48 months of probation (for sale of 10 kilograms)	48 months in prison (for sale of 25 kilograms)
Second-degree marijuana possession	48 months of probation (for possession of 25 kilograms or 100 plants)	48 months in prison (for possession of 50 kilograms)

* First- and second-degree sale and possession weights apply to cocaine and methamphetamine; sentences for those criminal charges apply to cocaine, methamphetamine and heroin.
** “Factors” refers to aggravating factors such as selling over state or national lines, making three or more sales, selling to benefit a gang, or the defendant being in a high position in a drug-distribution hierarchy.

Source: Minneapolis Star-Tribune, St. Paul Pioneer Press

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a person must have in his or her possession before being charged with a crime. For example, the total amount of methamphetamine needed to trigger charges actually increased, while we agreed to get tougher on marijuana. The heroin guideline stayed exactly the same.

These changes took effect in August.

With this new law, Minnesota expects to keep 600 low-level offenders out of prison. The projected \$12 million in annual savings would then be used to improve funding for return-to-society programs, treatment and probation facilities, and halfway houses.

It’s my hope that improved records and statistics will also come with these changes. In several years we should be able to determine whether treatment is preventing convicted drug users from re-offending, as well as tracking whether judges are taking advantage of their new authority to strengthen penalties against those who bring deadly drugs to the masses.

Minnesota has now implemented the first major changes to our drug-sentencing guidelines in nearly three decades. Nearly every group that participated in the creation of these new guidelines

left the table dissatisfied. And that is probably a good thing, because that’s usually the sign of an effective compromise.

Doing nothing was not an option, as allowing a state commission’s recommendations to become law would have been extremely problematic. Our solution wasn’t the perfect answer, but it was an answer — and a good first step toward addressing drug crimes in Minnesota as well as our prison overcrowding problem. ★

Rep. Tony Cornish, a Republican from Vernon Center, was first elected to the Minnesota House of Representatives in 2002.

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