

## LEGISLATIVE WORKING GROUP ON CONTROLLED SUBSTANCES

# Executive Summary of Report to the Legislature

The 2008 Legislature created the Working Group on Controlled Substances to study Minnesota's controlled substance laws and make recommendations to the legislature regarding threshold amounts for controlled substance crimes, the establishment of a separate sentencing guidelines grid, additional aggravating factors to target dangerous offenders, revising criminal history calculations, maximizing the use of deferred prosecutions, and increasing the use of early prison release programs for nonviolent controlled substance offenders who complete drug treatment while in prison.

The Working Group was comprised of representatives from law enforcement, county attorneys, defense attorneys, corrections, courts, treatment professionals, sentencing experts, and community members. The Working Group met seven times and received testimony and input from each of the represented groups. In addition, the Working Group welcomed input from any other interested parties and received testimony and letters from a wide variety of stakeholders.

The Working Group acknowledged that its scope of inquiry was necessarily limited and that there are many areas related to controlled substances that could not be addressed. Nevertheless, the Working Group did make recommendations as to each of the six legislatively mandated topics as follow:

### RECOMMENDATIONS

**Modify Threshold Amounts:** There were three proposals made to change the controlled substance thresholds. After intense discussion, the Working Group recommended a number of changes that it felt were consistent with public safety including the creation of a "marijuana grow" statute, reductions in the marijuana thresholds, and responsible increases in some of the cocaine, methamphetamine, and heroin thresholds.

**No Separate Sentencing Grid:** The Working Group recommended that there should not be a separate sentencing guidelines grid for controlled substances since it would be confusing and unnecessary.

**No additional Aggravating Factors:** While there were proposals that would have created a “Kingpin” classification, there were widely divergent views as to how that classification should be defined. The Working Group was unable to reach a consensus as to additional aggravating factors.

**Maintain Current Criminal History Score Calculations:** Currently, the number of “points” an offender is assigned for a prior conviction under the sentencing guidelines is determined by the severity level of the prior crime. This was not viewed as a high priority by the Working Group and therefore there was no recommended change to existing law.

**Maintain Current Use of Deferred Prosecutions Under Minn. Stat.**

**152.18:** There was a proposal to make the use of deferred prosecutions under 152.18 presumptive based upon a belief that they were not granted uniformly throughout the state. However, the Working Group ultimately rejected the proposal to make deferrals presumptive because data showed that such deferrals are being used throughout the state and many members felt that local judges and prosecutors should have the discretion to grant or deny such deferred prosecutions.

**Increase Early Release for Nonviolent Drug Offenders Who Complete**

**Treatment:** The Working Group unanimously recommended the increased use of early prison release for nonviolent drug offenders who complete treatment in prison. The Working Group made specific recommendations for ways to expand the pool of inmates who would be eligible to participate. The Working Group also recommended that any savings from the early release of prisoners or the changes to the drug thresholds should be used to fund additional prison chemical dependency treatment and to fund local corrections programs.

# MARIJUANA GROW

## Proposals

Severity Level	Law Enforcement	“Third”	Working Group Final
1 <sup>st</sup> degree –Level 9 (86 mos)	100 plants	100 plants	100 plants
2 <sup>nd</sup> degree – level 8 (48 mos)	50 plants	50 plants	50 plants
3 <sup>rd</sup> degree – level 6 (21 mos stayed)	10 plants	26 plants	25 plants
5 <sup>th</sup> degree – level 3 (1 yr + 1 day stay)	5 plants	11 plants	10 plants
Gross Misdemeanor	None	1 plant	None

# MARIJUANA THRESHOLD

## Proposals

Severity Level	Present	Law Enforcement	“Third”	Working Group Final
Severity Level	Possession: 100 kilos Sale: 50 kilos	Possession : 3 kilos Sale: 1.5 kilos	Possession: 50 kilos Sale: No proposal	Possession: 25 kilos Sale: 12.5 kilos
1 <sup>st</sup> degree –Level 9 (86 mos)	Possession: 50 kilos Sale: 25 kilos	Possession: 500 g Sale: 250 g	Possession: 25 kilos Sale: No Proposal	Possession: 12.5 kilos Sale: 6 kilos
2 <sup>nd</sup> degree – level 8 (48 mos)	Possession: 10 kilos Sale: 5 kilos	Possession: 250 g Sale: 125 g	Possession: No Proposal Sale: No Proposal	Possession: 1 kilos Sale: 500 grams
3 <sup>rd</sup> degree – level 6 (21 mos stayed)	Possession: 42.5g + Sale: N/A	Possession: 42.5g +	No Proposal	Possession: 42.5g +
5 <sup>th</sup> degree – level 3 (1 yr + 1 day stay)	NONE			Possession: 14g +
Gross Misdemeanor	42.5 grams or less			Possession: trace up to 14g

# COCAINE/METH/HEROIN

## Threshold Proposals

Severity Level	Present	Law Enforcement	Defense	“Third”	Working Group Final
1 <sup>st</sup> degree –Level 9 (86 mos)	Possession: 25g Sale 10g	Possession 35g Sale 10g	Possession: 250g or 25g + 2 factors Sale: 50g Or 10g + 2 factors of any manuf/sale meth	Possession: 100g or 25g + 2 factors Sale: 40g or 10g + 2 factors	Possession: 35g Sale: 10g
2 <sup>nd</sup> degree – level 8 (48 mos)	Possession: 6g Sale: 3g	Possession: 10g Sale: 3g	Possession: 25g or 6g + 2 factors Sale: 10g or 3g + 2 factors	Possession: 25g or 6g + 2 factors Sale: 10g or 3g + 2 factors	Possession: 10g Sale: 5g
3 <sup>rd</sup> degree – level 6 (21 mos stayed)	Possession: 3g Sale: Any	Possession: 3g Sale: any	Possession: 6g (2X current) Sale: 3g	Possession: 6g (2X current) Sale: any	Possession: 3g Sale: any
5 <sup>th</sup> degree – level 3 (1 yr + 1 day stay)	Possession: any Sale: N/A	Possession: any Sale: N/A	Possession: add petty misd. For trace	Add misdemeanor for trace	Possession: any Sale: N/A