



Council on Crime and Justice

**Potential Health Effects of Drug Sentencing Reform in Minnesota:
Health Impact Assessment of Proposed Policy**

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research

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ABOUT THIS REPORT

Introduction

This HIA is intended to provide evidence-based information about the potential health impacts drug sentencing policies could have on individuals, families, and communities in Minnesota. This report describes the potential health impacts associated with proposed drug sentencing policies in an effort to inform the decision-making process.

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Disclaimer

The authors of this report are responsible for the facts and accuracy of the information presented. Any findings, conclusions or recommendations expressed in this HIA report are those of the authors and do

not necessarily reflect the view of the drug sentencing policy experts and stakeholders who provided their perspectives during the process. For more information, contact Jane Marshall, Ph.D. marshallj@crimeandjustice.org.

EXECUTIVE SUMMARY

Background & Purpose

It has been 25 years since Minnesota's drug sentencing guidelines were written. Since that time, there have been great leaps in the science of criminal justice demonstrating that a focus on the personal and social context of the offender, and not just their offense, results in better outcomes. In 2015, the Minnesota legislature introduced four bills related to drug sentencing reform in an effort to reduce the prison population, provide improved addiction treatment to non-violent offenders, and improve public safety. The bills did not receive a hearing during the 2015 session, and they were re-introduced in 2016.

Crime, rehabilitation, and public safety are typically the dominant drivers of criminal justice decision-making. Drug sentencing was chosen to be the focus of this Health Impact Assessment (HIA) because health impacts have historically been left out of decision-making considerations in formulating criminal justice policy.

This report presents the findings and recommendations of an HIA. This HIA is intended to provide evidence-based information about the potential health impacts drug sentencing policies could have on individuals, families, and communities. An HIA is a decision making tool used to analyze potential positive and negative health impacts of pending decisions. HIAs provide a flexible framework to use public health expertise, scientific data, and community input to evaluate potential health impacts of proposed policies. These findings and recommendations illustrate how particular changes in the proposed drug sentencing legislation could facilitate positive (or negative) health, recovery, and community well-being.

Proposed Policy

Four bills addressing drug sentencing reform in Minnesota were introduced during the 2015 Minnesota legislative session: Senate File 773, companion bill House File 994, Senate File 3182, and companion bill House File 2107. The proposed legislation was motivated by the political desire¹ to: reduce the prison population; provide non-violent offenders with improved addiction treatment; and improve public safety by imprisoning drug criminals with a history of violence.

The proposed legislation may have potential effects on six aspects of drug sentencing in Minnesota:

- 1) **Threshold drug weights**, which determine the severity of drug crimes.
- 2) **Mandatory minimums**, which require prison sentences for subsequent first, second, and third degree drug crimes, and jail sentences for subsequent fourth and fifth degree drug crimes.

- 3) Eligibility criteria for the **Conditional Release Program**, which qualifies participants for early release from prison once they have successfully completed chemical dependency treatment.
- 4) Eligibility criteria for **discharge and dismissals**, which defer prosecution for certain low-level offenders.
- 5) **Aggravating factors**, which are used to determine culpability of the defendant and the appropriateness of imposing a harsher sentence.
- 6) Reinvestment savings to increase Department of Corrections (DOC) funding for chemical dependency and mental health **treatment programs**. This HIA did not study the health impacts of the other programs of the reinvestment legislative provision, which include offender educational programs, crime victim services, probation and supervised release enhancement, re-entry programs, and recidivism reduction programs.

Methodology

This HIA was conducted from June 2015 to January 2016 by the Council on Crime and Justice, in collaboration with Better Futures and Nexus Community Partners, with valuable input from a diverse array of stakeholders, including law enforcement, attorneys, corrections staff, judges, treatment professionals, and impacted community members. The team formed an advisory committee, which provided guidance on research scope, interpretation of findings, and development and prioritization of recommendations. External advisors and experts in HIA assisted the project by providing technical guidance for the HIA process.

This HIA was conducted in five steps: 1) **Screening**, where we determined that the focus of our HIA would be drug sentencing reform due to the shifting nature of drug sentencing policies around the nation; 2) **Scoping**, where we identified health indicators and research methods through a one-day workshop with community members and stakeholders, as well as our advisory committee; 3) **Assessment**, which included analyses of potential health impacts that could result from the drug sentencing legislation; 4) **Recommendations** were developed, based on our findings and feedback from our advisory committee, to mitigate potential negative health impacts and maximize positive health impacts; 5) **Reporting** our recommendations and findings through this paper, presentations to the public, and media is intended to educate the public on health and drug sentencing reform. There is a final step to the HIA process that has not been conducted yet, and may be depending on resources; this is the **Monitoring and Evaluation** step, in which future health impacts resulting from drug sentencing policy changes are assessed.

The project team conducted an extensive literature review of 201 sources and 44 key informant interviews to 1) Assess the potential impacts of the proposed drug sentencing legislation on health outcomes, and 2) Support the development of evidence-based recommendations. The team sought to answer the following research questions:

- 1) How many Minnesotans convicted of a drug crime may be diverted from incarceration to probation?
- 2) How many may receive shorter prison sentences?
- 3) How might increases in diversion to probation affect the health of individuals, families, and communities?
- 4) How might shorter prison sentences affect the health of individuals, families, and communities?
- 5) What health inequities are being caused or maintained by current sentencing practices?
 - a. How might the proposed reforms mitigate or exacerbate these inequities?
- 6) How might changes to funding for mental health and drug treatment services affect access to and quality of these services?
- 7) How might changes in funding for treatment affect the health of individuals, families, and communities?

Major Findings

How many Minnesotans convicted of a drug crime may be diverted from incarceration to probation?

- SF 773/HF 994 will result in more than 5 times as many Minnesotans being diverted from incarceration to probation.
- SF 1382 and HF 2107 will increase prison rates for some convicted offenders.

How many may receive shorter prison sentences?

- SF 773/HF 994 will result in more than 3 times as many shortened prison sentences.
- SF 1382 and HF 2107 will increase sentence lengths for some convicted offenders.

How might increases in diversion to probation affect the health of individuals, families, and communities?

- It is estimated that SF 773/HF 994 would result in more than a 1,000 additional people per year being free from a felony conviction record. SF 1383/HF 2107 would result in an estimated 32 more people per year remaining free of a felony conviction record.
- Diversion to probation will improve the health of individuals, families, and communities by reducing exposure to diseases, violence, trauma, and stress; increasing family unity; improving the ability to manage addiction and mental health; and lowering crime rates.
- Diversion to probation will only improve health outcomes associated with collateral consequences (i.e., having a felony record) if a person receives deferred prosecution and has their charges dismissed after successfully completing the conditions of probation.

How might shorter prison sentences affect the health of individuals, families, and communities?

- Research suggests there is no effect to a slight criminogenic effect associated with longer lengths of imprisonment compared to shorter lengths of imprisonment.
- Even short prison sentences can negatively impact health, as prison sentences of less than a year have been found to be associated with early mortality.
- Shorter prison sentences may have a modest impact on improving health outcomes by enabling individuals to reunite with family sooner and reducing the length of exposure to disease, such as Hepatitis C, violence, trauma, and stress.

What health inequities are being caused or maintained by current sentencing practices?

- People of color and Native Americans in Minnesota are more likely to be arrested for drug crimes and sentenced to prison than White Americans convicted of the same crime. High incarceration and felony record rates result in multiple, cumulative inequities in education, employment, income, housing, and health outcomes.

How might the proposed reforms mitigate or exacerbate these inequities?

- While the proposed reforms may decrease incarceration rates overall for all racial groups, they will not eliminate the disproportionalities in sentencing that result in health inequities for people of color and Native Americans due to greater police presence in low-income neighborhoods populated primarily by people of color, and especially in African American neighborhoods.

How might changes to funding for mental health and drug treatment services affect access to and quality of these services?

- SF 773/HF 994 will generate an estimated \$15.01 million per year in net savings. It will be at the DOC's discretion how the funds are allocated among substance abuse and mental health treatment programs, offender educational programs, and/or crime victim services.
- SF 1382 will generate an estimated \$1.1 million per year in net savings. SF 1382 specifies that the DOC must spend 50% of the savings on inmate treatment programs, probation and supervised release enhancement, and re-entry programs. The other 50% of savings must be used to fund grants for chemical dependency and mental health treatment programs, recidivism reduction programs, and drug courts.

How might changes in funding for treatment affect the health of individuals, families, and communities?

- Incarcerating people who suffer from drug addiction has both short- and long-term negative health impacts for individuals, families, and the larger community. Policies that increase access to community-based treatment services have the potential to improve health outcomes.

- Treating drug dependence for convicted drug offenders becomes the responsibility of the criminal justice system rather than the health care system.
- Keeping people out of the criminal justice system in the first place will lead to the greatest improvement of health outcomes and the highest cost savings.

Recommendations

The recommendations are drawn from the findings and are intended to maximize health benefits while minimizing health risks. In consultation with the advisory committee, the recommendations were prioritized based on their potential to have a significant impact in reducing health inequities experienced by individuals convicted of drug crimes, their families, and the broader community.

The evidence gathered by this HIA suggests decreasing the use of incarceration, and increasing use of community-based treatment, probation, and resources that prevent initial contact with the criminal justice system. These practices will likely maximize the health benefits and mitigate unintended consequences of the proposed legislation. The following recommendations therefore aim to reduce exposure to incarceration and its associated health impacts to the greatest extent possible.

State legislators may consider:

- Eliminating mandatory minimums since doing so has been associated with reductions in incarceration rates ranging from 15% to 43% in other states and will increase the number of people who can access community-based substance abuse and mental health treatment, which is associated with recovery outcomes while on probation.
- Raising drug weight thresholds so that more people will be recommended for probation under the Sentencing Guidelines and will be able to access community-based substance abuse and mental health treatment.
- Expanding drug court capacity and eligibility since drug courts are associated with lower revocation and recidivism rates, shorter prison stays, and reduced rates of relapse.
- Reclassifying some low-level offenses as misdemeanors so that, while still being held accountable for their crime, more people can access jobs, education, and housing.
- Requiring racial impact statements for criminal justice bills in order to identify the potential for unnecessary or unintentional racial and ethnic disparities in arrest, sentencing, and incarceration. A racial impact statement is a tool for lawmakers to evaluate potential disparities of proposed legislation prior to adoption and implementation of the legislation. Analogous to fiscal impact statements, they assist legislators in detecting unforeseen policy ramifications.
- Making legislation retroactive in order to maximize the number of people eligible to serve shortened sentences.
- Allocating sufficient funds to expand prison- and community-based substance abuse and mental health treatment services, which are associated with lowered recidivism and relapse rates.

- Allocating additional funds to expand pre-release programming, re-entry services, vocational training, work programs, and educational programming, all of which are associated with reduced recidivism rates.
- Amending state law to reduce collateral consequences to employment in order to promote successful reentry and lower recidivism rates as recommended in the Collateral Sanctions Committee 2008 Report to the Legislature.

Law enforcement agencies may consider:

- Making health equity and the analysis of structural inequities, including structural racism, a priority in policing policies and practices.
- Requiring racial impact statements for agency policies, rules, and procedures in order to identify potential for unnecessary or unintentional racial and ethnic disparities in arrest rates.

The Minnesota Department of Corrections may consider:

- Expanding selection criteria for substance abuse and mental health treatment services, which are associated with lowered recidivism and relapse rates.
- Integrating substance abuse and mental health services to meet the needs of the large number of people who have a dual diagnosis.
- Expanding eligibility for pre-release programming, re-entry services, vocational training, work programs, and educational programming, all of which are associated with reduced recidivism rates.
- Making health equity and the analysis of structural inequities, including structural racism, a priority in departmental policies and practices.
- Requiring racial impact statements for agency policies, rules, and procedures in order to identify the potential for unnecessary or unintentional racial and ethnic disparities in program design and delivery, and eligibility standards.

ABOUT THIS HEALTH IMPACT ASSESSMENT

Human development research concludes that stress, induced by trauma, deteriorates the structures of the brain responsible for emotion, memory, and learning. Given the research, it is not surprising that people who grow-up and live in high-stress environments have higher rates of learning, emotional regulation, and physical health problems. Trauma, unhealthy coping strategies—like drug use—and mental health problems are often found as co-occurring circumstances among persons who need treatment. Additionally, the rate of physical health problems is higher among those with histories of trauma and mental health problems. Thus, for those who enjoy greater access to quality preventative resources, including increased access to sectors that provide health-improving opportunities, human development will be much smoother.

Four bills related to drug sentencing reform were introduced during the 2015 Minnesota legislative session: SF 773, companion HF 994, SF 3182, and companion HF 2107. The legislation proposed to make changes to six basic aspects of drug sentencing in Minnesota:

- 1) Threshold drug weights
- 2) Mandatory minimums
- 3) Conditional Release Program
- 4) Discharges and dismissals
- 5) Aggravating factors
- 6) Funding for chemical dependency and mental health treatment programs

Applying the HIA framework to evaluating the policy impacts for drug sentencing is worthwhile because criminal justice policies do not typically consider possible health impacts. Indeed, several key stakeholders expressed that they have never thought about how people's health could be impacted by drug sentencing laws. Through this HIA, we seek to move the discussion beyond the criminal justice system to consider the public health impacts of proposed drug sentencing reform legislation on individuals, families, and communities.

Throughout the process of conducting this HIA, we have been committed to a neutral process and have sought to incorporate all perspectives on the issue. Our findings and recommendations reflect the experience and insights of the people who will potentially be most affected by the legislation, whether they are part of the court system, in law enforcement, from community organizations, or are those who have experienced the effects of drug sentencing first-hand. This HIA sought to address the following goals.

HIA Goals

- Educate Minnesotans on the connection between criminal justice policies and public health, including broader community, social, and economic health.
- Promote the understanding of drug sentencing policies in Minnesota and their impacts through dialogue with community members who may be affected by current policy.
- Develop an awareness of HIAs as tools to promote public policies that consider health impacts and health equity.

- Discover ways to leverage the work of other participants to foster a greater impact through partnerships.
- Highlight the benefits of HIAs in informing criminal justice policy.

HIA Process

The goals of this HIA were achieved through the following process, which is defined by The National Research Council² as comprising six main steps.

1. Screening: Identify upcoming policy decisions and determine the HIA’s purpose and value.
2. Scoping: Identify potential health indicators and research methods.
3. Assessment: Analyze identified potential health impacts.
4. Recommendations: Determine options to mitigate identified potential negative health impacts and maximize identified potential positive health impacts.
5. Reporting: Share findings with stakeholders, including decision makers.
6. Monitoring and Evaluation: Monitor and evaluate actual future health impacts resulting from policy changes, and assess the HIA process, results, and lessons learned.

This HIA followed the process described above. For a complete description of the process used to conduct this HIA, please see Appendix A: HIA Methodology.

HIA Recommendations

The HIA includes practical recommendations to improve community health and minimize possible health risks. HIAs are designed to be:

- Proactive – HIAs are conducted on policies that have not been implemented yet. As a result, the HIA is a tool that can be used in discussions with decision makers and stakeholders (politicians, professionals, and citizens) to help create policies that work.
- Practical – HIAs provide evidence and practical recommendations that help decision makers and stakeholders anticipate the effects of a policy in order to improve it.
- Specific – HIAs provide information on a specific issue versus a general topic, making the information more relevant to decision makers.
- Relevant – HIAs gather evidence from a variety of sources, including statistics, expert opinions, and community member testimony, in order to shed light on the experiences and perspectives of those impacted by policy.

BACKGROUND AND CONTEXT OF DRUG SENTENCING IN MINNESOTA

Many Minnesotans with drug addiction and dependence issues do not have access to treatment. There are an estimated 94,000 Minnesotans addicted to or dependent on illegal drugs. In 2014, 17% (38,213) of that population received treatment through a community-based treatment facility.^{3,4} A significant portion of these admissions (31%) were made through a referral from the criminal justice system.⁵ In fact, almost twice as many people were referred to treatment by the criminal justice system as were referred by a substance abuse (9%) or other health care provider (7%)⁶. Even when people are referred for services by the criminal justice system, many do not receive treatment.

Most importantly, those who are able to access treatment without coming into contact with the criminal justice system are able to avoid the collateral consequences of a criminal record and the interpersonal and social consequences of spending time in prison or jail. Collateral consequences are legally- and

socially-imposed penalties or disadvantages that automatically occur upon a person's conviction for a felony, misdemeanor, or other offense. They are imposed in addition to the sentence enacted by the court. Collateral consequences can include, among other consequences, losing access to job opportunities, and/or becoming ineligible to receive public assistance benefits. It is these additional consequences to family unity, housing, employment, and education that have many of the most severe and long-term repercussions to health.

Drug laws, sentencing practices, and policing practices that prioritize punishment over treatment may have negative health impacts for individuals, families, and communities. As of 2015, Minnesota prisons are full, in large part because of a growing number of people convicted of drug crimes. In 2015, 19% of all people serving time in in prison were there for a drug crime.⁷ Despite criminal justice efforts aimed at intervening in the availability of drugs and drug addiction, these problems continue to grow.^{8.9.10.11}

Drug abuse and the public safety issues that result from drug sales and trafficking are not exclusively a criminal justice issue; they are also a public health issue. Drug sentencing guidelines are a tool of the criminal justice system and as such they are not designed to address the public health aspects of drug use in our communities. A comprehensive public health approach such as that recommended in the Minnesota State Substance Abuse Strategy (see Appendix B for the specific recommendations, which balances "criminal justice interventions [with] evidence-based drug use treatment, prevention, and recovery efforts,"¹²) is needed in order to ensure the conditions in which people can be free of drug addiction and communities can live in safety.

Social Determinants of Health

The conditions present at the community, organizational, and policy levels are called social determinants of health, as illustrated in Figure 1. The World Health Organization defines the social determinants of health as "the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life."¹³ Intended or not, social inequalities and health inequities are caused by the structures and systems created by government policies, corporate decisions, and the actions of less formal decision-making bodies. Consequently, policy decisions and reforms are needed to address these discrepancies.

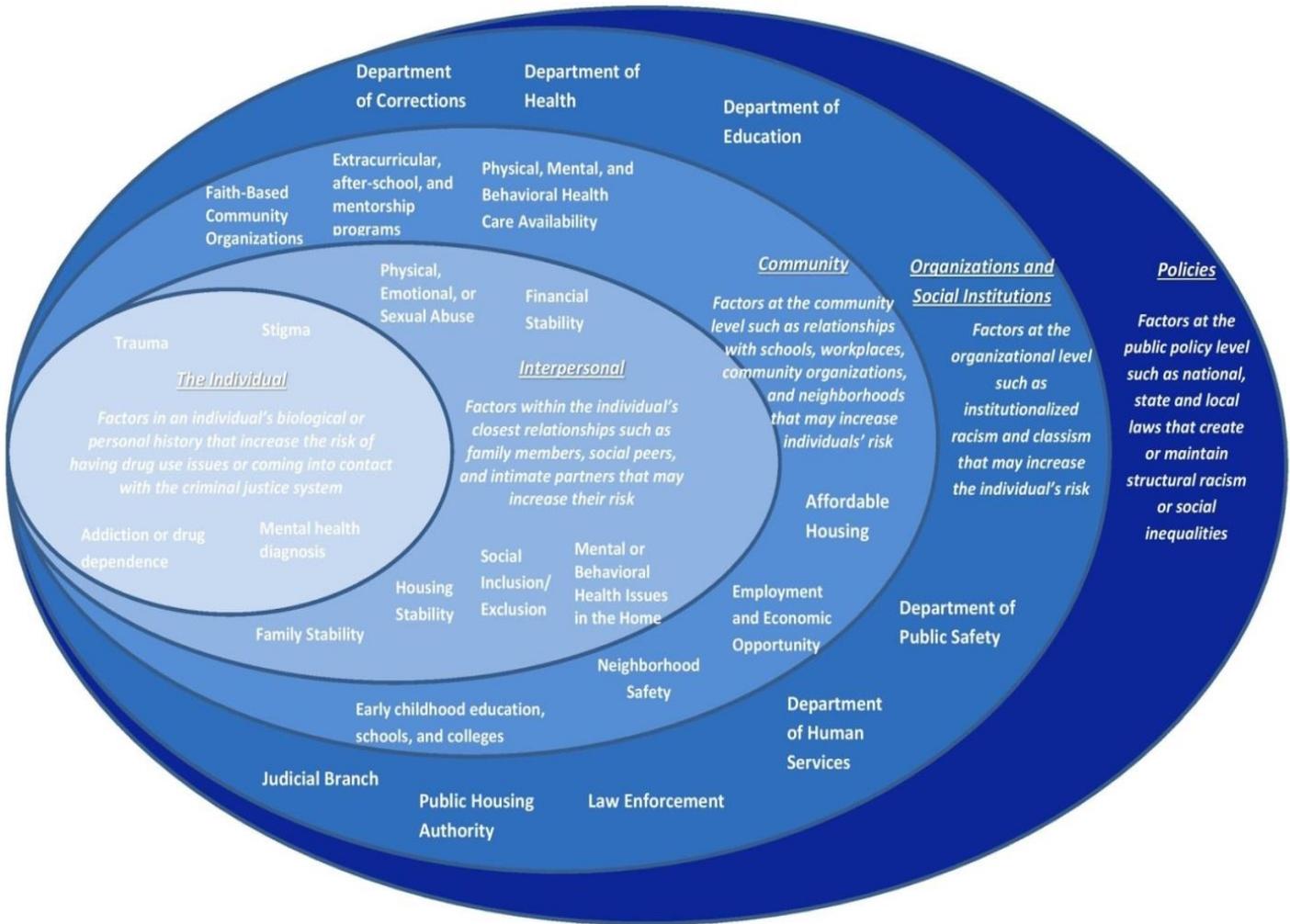


Figure 1. Social determinants of health: Social and structural determinants that may impact the well-being and health outcomes of those who have interactions with the criminal justice system, has a ripple effect on the broader community. Source: CCJ HIA Potential Health Effects of Drug Sentencing Reform in Minnesota, 2016.

The success of the bills will be limited by persistent structural inequities, such as employment, housing, and education. To this end, we have analyzed the potential impacts of the bills on the social determinants of health and included in our recommendations suggestions for complementary policies aimed at breaking the link between drugs, crime, and the criminal justice system. Disrupting this pattern could be beneficial not only on a financial level (in Minnesota the cost per year of housing a single prisoner averages more than \$41,000), but on a social level as well.¹⁴

Research has consistently demonstrated that addressing the social determinants of health—increasing access to health insurance, medical care, employment, stable housing, and meaningful social connections—reduces both drug use and interactions with the criminal justice system.¹⁵ Likewise, contact with the criminal justice system and the resulting criminal record bestow a harmful effect on the

social determinants of health. A criminal record may limit access to employment, income, higher education, housing, healthcare (as a result of unemployment), and public assistance.¹⁶

EXISTING CONDITIONS IN MINNESOTA

Criminal Justice Profile

The negative consequences of Minnesota's practice of imprisoning people whose drug crimes are often the product of their addictions are felt most strongly by low-income Minnesotans and Minnesotans of color. Black American, American Indian, and Hispanic Minnesotans are more likely to be arrested, sentenced for drug crimes, and sentenced to prison than White Americans convicted of the same crime.¹⁷ Disproportionate contact with the criminal justice system exacerbates the health inequities and social inequalities experienced by Minnesotans of color and Native Americans by limiting their access to employment, housing, financial assistance, and educational loans,^{18,19} which may result in perpetuated inequities across generations.

Minnesota's Demographics

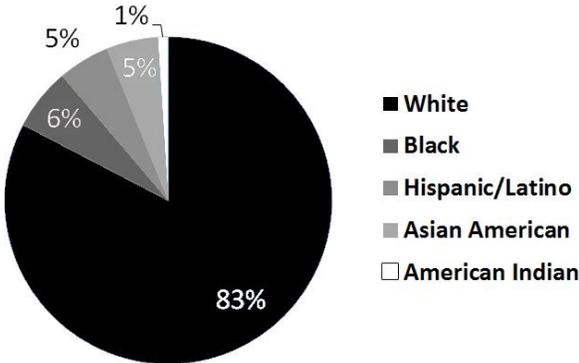
According to the U.S. Census Bureau, Minnesota's population was approximately 5.5 million people in 2014.²⁰ The vast majority, or 81%, identified as White American; 6% as African American; 5% as Asian American; 5% as Hispanic or Latino; 1% as American Indian; 2% as two or more races; and .01% as Hawaiian. As seen in Figure 2, racial disproportionalities concerning Black Americans exist at every point of contact with the criminal justice system, beginning with the first point of entry—arrest.

Between 10,000 and 15,000 children in Minnesota currently have a parent in prison.^{21,22} The fact that African American, American Indian, and Latino parents are more likely to spend time in prison for drug crimes means that children of color and American Indian children are at a much higher risk of having an incarcerated parent.²³

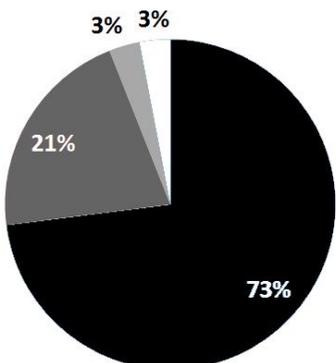
Arrest Rates

Arrest rates underlie disproportionalities in conviction rates. In 2014, there were a total of 19,203 arrests made for drug crimes (including manufacturing, selling, and use) in Minnesota. Of total arrests, 11,867 were for possession of drugs and 7,336 were for sales.²⁴ Further, Black Americans in Minnesota represent 31% of marijuana possession arrests even though they make up only 6% of the population. This is one of the largest disparities in marijuana possession arrest rates in the nation. Yet, overall marijuana use rates of Black Americans and White Americans are roughly the same.²⁵

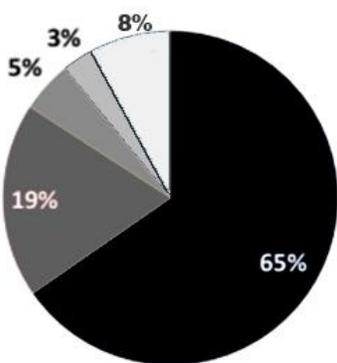
General population (2014)



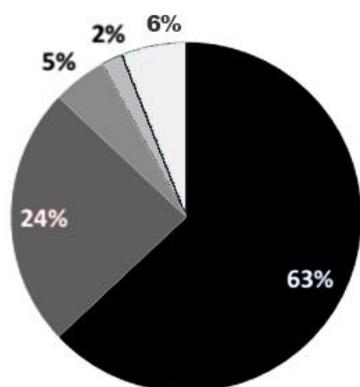
Arrest for drugs (2014)



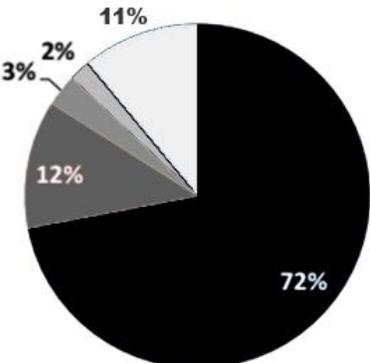
Sentenced (2013)



Probation (2001-2012)



Prison 1-2 yrs (2015)



Prison 6+ yrs (2015)

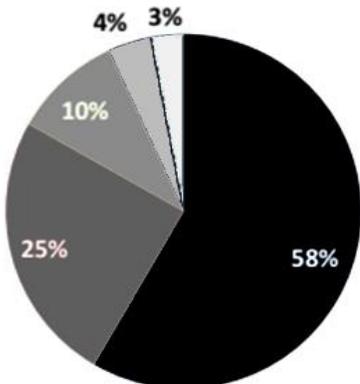


Figure 2. Racial disproportionalities. Racial disproportionalities at different points of contact with the Minnesota criminal justice system for drug crimes.

Sentencing Rates

In 2015, 25% (n=3,821) of all people convicted of a felony (n=15,318) were sentenced for a drug crime.²⁶ When individuals are convicted for drug crimes, they are either sentenced to prison or probation.

Incarceration Rates

Minnesota's incarceration rates are low compared to those in other states, but are seeing an upward trend due to increasing drug sentencing rates, especially for 1st degree offenses.²⁷ In 2013, 94% of people convicted of drug crimes spent time in prison (27%) or jail (67%).²⁸ The total prison population was 10,119 in 2015, of which 19% were serving time for drugs. 53% were White American, 35% were Black American, 10% were American Indian, and 2% were Asian American. Mandatory minimums were created by the Minnesota Legislature in 1989, and the rate of drug offenders in Minnesota prisons more than doubled from 9% in 1990 to 19% in 2013.^{29, 30}

Probation Rates

It is important to consider probation rates because probationers typically are required to spend a portion of their probation sentence in jail. Minnesota has the seventh highest probation population in the nation.³¹ In 2014, the adult felony probation population was 41,581—32% (13,251) of which comprised drug offenders.³² In 2008, it was reported that probation officers had caseloads 3 times greater than what they were in 1980.³³ Currently, Minnesota probation officer caseloads range from 50 to 120 cases, based on qualitative interviews. In 2014, 67% of felony probationers were White American, 20% were Black American, 6% were American Indian, 6% were Hispanic, and 2% were Asian.³⁴

Probation Revocation Rates

The prison population is driven in large part by probation violations, known here as revocations. The Minnesota Sentencing Guidelines Commission states that “a probation violation occurs when an offender’s behavior or criminality violates conditions of probation, but does not result in a new felony criminal conviction”.³⁵ Thus, if probation is revoked, a person may be sent to prison. If revocation rates are high, the goal of cost savings by reducing the number of prison beds will not be met, nor will incarcerated people be protected from the health risks associated with prison. From 2001 to 2012, the revocation rate for all felony offenders was 16% compared with 17% for felony controlled-substance offenders,³⁶ suggesting that the nature of the offense for which one is found guilty does not necessarily play a role in the likelihood of revocation.

Recidivism Rates

Offenders ages 17 years-old or less have a higher probability of recidivism or recidivate more quickly than older offenders. Black American and Hispanic offenders have higher recidivism rates than White American offenders, and offenders with more serious prior criminal records have higher recidivism rates than those with less serious criminal histories³⁷

Drug Courts

A statewide evaluation of 16 Minnesota drug courts found a 47% reduction in re-conviction rates and a 37% reduction in new charges for drug court participants. Drug courts also resulted in an average of 55 fewer total days of incarceration resulting in a reduction of total incarceration costs of \$3,189 per participant.³⁸

There are currently 17 adult drug courts serving 26 counties in Minnesota.³⁹ Since drug courts are not available in all judicial districts, an individual's access to treatment and other support services is determined by the location in which they are charged. Even when an eligible person is charged in a county in which a drug court is available, their opportunity to benefit is limited by probation officer caseloads which range from 50 to 120 cases, based on qualitative interviews. Access to drug court can indirectly impact an individual's opportunity to avoid a criminal record because, unlike traditional criminal court, drug court judges are more likely to grant a discharge and dismissal when the individual participates in treatment as part of probation due to the more holistic rehabilitation approach provided by drug courts.⁴⁰

Race, Policy, and Rates of Contact with the Criminal Justice System

Many of the racial inequities in incarceration rates are due to the fact that Black Americans and Native Americans are more likely to be arrested for non-violent drug possession and thus, accrue higher criminal history scores.⁴¹ Criminal history scores are used in sentencing decisions to determine whether or not a person is eligible for probation or the length of their prison or probation sentence. (See Appendix C: Sentencing Guidelines Grid, Current and Proposed Versions). In Minnesota, Black Americans and Native Americans are more likely to be sentenced to prison for drug crimes due to having higher criminal history scores. Even if policy does change, the rate of people of color sentenced to prison will still be greater than the rate of White Americans due to a higher likelihood of arrests for non-violent crimes, resulting in a higher criminal history score.

What we learned from stakeholders: The impact of the proposed drug sentencing policy on racial inequities

Many informants do not think that racial disproportionalities will change with the proposed legislation. Key informants did expect to see reductions in racial disparities in the criminal justice system. While they anticipate that both fewer African Americans and White Americans would go to prison for drugs, they also anticipate there would be a greater decline in rates of White Americans going to prison than Black Americans. Many attributed their expectations to the presence of greater police presence and surveillance in African American communities.

Others, however, believe that disproportionalities would increase, especially if aggravating factors are put into policy, as police and prosecutors would partner to apply them in building evidence for maximum likelihood of prosecution. If thresholds are raised, new ways to prosecute and find evidence (such as with the proposed aggravating factors) for meeting those thresholds may be attained through harder policing.

While several informants felt that racial targeting is not a problem, others perceived limitations with the proposed policy because they do not address racial profiling, and surveillance by police.

The majority of stakeholders felt treatment and not incarceration are the most efficient and effective way to reduce drug-related crimes and addiction.

Some perceived that drug sentencing appears to be less about reducing crime and addiction and more about punishing people by race. They described the abundance of White American people who use drugs, such as on college campuses, and yet do not get policed and convicted the same way that

neighborhoods of color do.

One corrections staff person highlighted the damage criminalizing drug use does to communities steeped in intergenerational poverty.

With felonies on record, what are you gonna go to when you get out of prison? If you don't have job skills and limited education, it's a stretch to be happy working at McDonalds. Better to get EBT payments [food stamps] and flip a brick of weed [sell marijuana]. There needs to be more programming for people getting out [of prison]... They don't have the drive for something in life. They're beat down from interactions with a prejudicial system, and don't have an attitude to go to college or start a business.

Health Profile

In 2014, the Minnesota Department of Health (MDH) presented its report, *Advancing Health Equity in Minnesota*, to the Minnesota State Legislature. Under mandate from the Legislature, MDH was directed to “provide an overview of Minnesota’s health disparities and health inequities, to identify as far as possible the inequitable health conditions that produce health disparities, and to make recommendations to advance health equity in Minnesota.”⁴² The report acknowledges the disproportionate health impacts of incarceration on communities of color and American Indians.

The following sections contain information on the physical health, mental health, and drug use and treatment rates of Minnesota’s general and criminal justice populations. Rates of physical and mental health, substance abuse, and treatment among drug offenders in Minnesota are unknown. The rates for the total state inmate population (drug felons and all other felons) are presented. Breakdowns by racial group, especially White American and Black American Minnesotans, are provided.

Physical Health

One-third of Minnesota inmates were diagnosed with a chronic physical health condition in 2013.⁴³ Treatment rates for physical health problems among the state’s prison population are low. According to a 2014 Legislative Auditor’s report, “Relatively small proportions of the offenders in Minnesota correctional facilities received periodic physical exams between 2008 and 2013.”⁴⁴ For example, of persons incarcerated four or more years, only 20% received a periodic physical exam after the physical exam they must undergo upon entry into prison.⁴⁵ “Many urgent requests for off-site care did not appear to be handled within the time frames specified in DOC’s health services contract”⁴⁶ In fiscal year 2013, the Minnesota DOC spent nearly \$68 million in state funds for inmate health services, which was about 20% of the DOC facilities’ total operating costs. \$17.6 million went toward medical services.⁴⁷ Despite spending for physical health treatment in prisons, DOC compliance with professional standards is inconsistent, policies are insufficient, training lacks, and quality assurance programming is weak.⁴⁸

Drug Use & Addiction

In 2014, 41% of Minnesotans reported using some illegal drug during their lifetime,⁴⁹ and there are an estimated 94,000 Minnesotans addicted to or dependent on illegal drugs.⁵⁰ National estimates suggest that in the general and criminal justice populations, Black American Americans have lower to equal rates of substance use and mental health problems compared to White American Americans.^{51,52,53,54,55} In the general national population, 30% of White Americans, 23% of Hispanics, and 13% of Black Americans have substance use problems.⁵⁶

In the Minnesota prison population, it is estimated that 85-90% of inmates have a substance use disorder.⁵⁷ Nationally, rates of addictions among inmates range from 34-51% for Hispanics, 44-53% for Black Americans, and 59-63% for White Americans.^{58,59}

Addiction and Mental Health

Often, people contending with substance abuse also struggle with mental health issues. Nationally, there are more people with a diagnosed mental health issue serving time in prison than there are in mental health institutions.⁶⁰ More than 700,000 Minnesotan adults live with a mental health issue of any kind.⁶¹ In 2013, just 47.9% (338,000) of Minnesotans with a mental health issue received treatment or counseling.⁶² For those with substance use problems in a national prisoner sample, 74% reported an underlying mental health issue. Nearly 75% of women in Minnesota state prisons have mental health concerns, often because of sexual and physical abuse starting in childhood and continuing into adulthood.⁶³ Out of a national sample of probationers, 41% were sentenced to drug or alcohol treatment, and 37% finished it for a completion rate of 90%, suggesting that treatment receipt and completion are much higher in the community than in prison or jail.⁶⁴

Mental Health

More than 700,000 Minnesotan adults live with a mental health problem of some kind.⁶⁵ Of the 48% in 2013 who received treatment, over 80% reported that the treatment they received helped them to function better.⁶⁶ American Indian Minnesotans and Minnesotans of color are less likely than White American Minnesotans to receive mental health services.⁶⁷

\$6.7 million was spent on mental health services for inmates in 2013.⁶⁸ Still, necessary treatment is lacking. Prisoners struggling with mental health problems may be housed separately from the rest of the inmate population in a mental health unit or supportive living services unit.⁶⁹ Some mental health directors described supportive living services as more like protective custody than a treatment program.⁷⁰ An evaluation of health care services in Minnesota prisons found that the mental health units within state prisons did not have sufficient capacity to meet the current need for therapeutic treatment. Mentally ill offenders spend more time in segregation than other offenders.⁷¹ According to a report from the Office of the Legislative Auditor in 2014, “offenders have less access to mental health care in segregation than in the prison’s general population.”⁷² “Offenders who have received Supportive Living Services or spent time in the Mental Health Unit spent nearly two and one half more time in segregation as a proportion of their total days in DOC than other offenders.”⁷³

PROPOSED DRUG SENTENCING LEGISLATION

Breaking the Links among Drugs, Crime, and the Criminal Justice System

In 2015, the total prison population in Minnesota was 10,119, 19% of which were for drug convictions.⁷⁴ Minnesota is at a historical turning point in which governmental sectors are beginning to redefine what the goal of the criminal justice system should be, from successful convictions to successful treatment and diversion from prison, to promote healthy families and communities. As described by Gjelsvik et al. (2014), “the U.S. leads the world in incarceration, with nearly one of every 100 adults behind bars”.⁷⁵ In response to prison overcrowding, Minnesota legislators propose bills aimed at changing drug sentencing laws as a means to reduce the prison population.⁷⁶

Michigan, New York, Ohio, and other states have repealed mandatory prison sentences for drug offenders and given judges the power to impose shorter sentences, probation, or drug treatment. Following these changes, crime rates fell.⁷⁷ Michigan reduced its prison population by 15% between 2006 and 2010, and the rate of violent crime dropped 3% between 2009 and 2010.⁷⁸ Following changes to New York's mandatory minimum drug penalties, the number of drug offenders in state custody decreased by more than 43%.⁷⁹ In 2010, South Carolina eliminated mandatory sentences for most low-level drug sales, and has since seen a significant drop in its prison population as well as declining crime rates.^{80 81}

As states have increased access to mental health and substance abuse treatment services as a preventative effort, they have seen large reductions in crime and cost savings as a result. For example, when free substance use treatment was provided to low-income individuals in Washington State, arrests dropped 17% to 33% and criminal justice costs dropped an average of \$5,000 to \$10,000 per person.^{82 83} Furthermore, each person who completed treatment had an average income increase of \$2,000.⁸⁴

While Minnesota has one of the lowest incarceration rates in the nation, it has some of the most punitive drug sentencing laws. For example, Minnesota's presumptive sentence for a 1st degree drug possession offense is 86 months, while in Kansas it is probation for 11 months. In Washington it is jail for 3 months. In Oregon it is jail for 90-180 days and 3 years of supervision.⁸⁵ The proposed policies have the ability to either bring Minnesota more in alignment with the rest of the nation, or further from the nation's average drug sentencing schemes. Either way, Minnesotans' health will likely be affected.

Proposed Policy Changes

In order to demonstrate connections between proposed policy changes and the anticipated health, the HIA team developed an HIA pathway diagram (Figure 3). Ultimately, the proposed policy changes may impact recovery from addictions, and the physical, mental, family, and community well-being of people involved with the criminal justice system for drug offenses, their families, and the larger community.

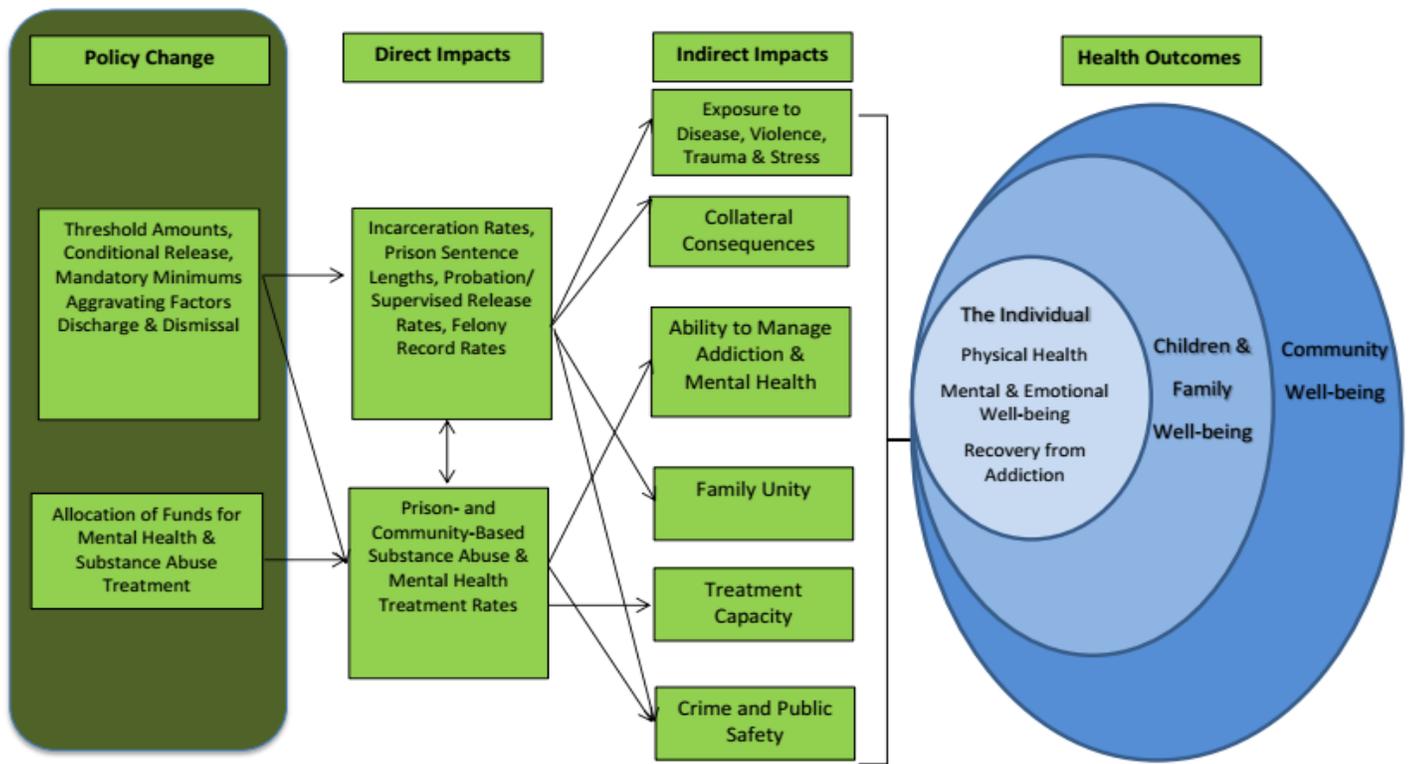


Figure 3: Pathway diagram: Policy changes. Pathway diagram of the potential health outcomes associated with proposed Minnesota drug sentencing reform policies.

As shown in Figure 3, the legislation proposes to make changes to six basic aspects of drug sentencing guidelines in Minnesota.

- 1) Threshold drug weights, which determine the severity of a drug crime
- 2) Mandatory minimums, which require prison sentences for subsequent first, second, and third degree drug crimes, and jail sentences for subsequent fourth and fifth degree drug crimes.
- 3) Eligibility criteria for the Conditional Release Program, which qualifies participants for early release from prison once they have successfully completed chemical dependency treatment
- 4) Eligibility criteria for discharge and dismissals, which defer prosecution for certain low-level offenders
- 5) Aggravating Factors, which are used to determine culpability of the defendant and the appropriateness of imposing a harsher sentence.
- 6) Funding for chemical dependency and mental health treatment, as well as community re-entry and victim services programs. This HIA focuses only on funding for treatment.

The following section provides a high level summary of current statutes and their connection to specific provisions included in the proposed bills. For more detailed information on the bills, see Appendix D: Comparison of Existing and Proposed Drug Sentencing Laws.

Table 1: Comparison of Proposed Legislation ^a

Policy	SF 773/ HF994	SF 1382/ HF 2107
Thresholds	Cocaine, meth, and heroin increase to 1991 weights	<ul style="list-style-type: none"> ● Some increase in cocaine & meth ● Except when aggravated; then, no change ● No change in heroin ● Lowered for marijuana & opiates
Mandatory minimums	Repealed	<ul style="list-style-type: none"> ● Repealed for 3rd-5th degree ● Priors: Must also be 1st & 2nd degree ● Or: Aggravating offense circumstances/amounts ● Duration lengthened to grid time
Aggravating factors	No change	<p><u>HF 2107</u> defendant or offense involved:</p> <ul style="list-style-type: none"> ● Or accomplice had firearm/dangerous weapon ● Prior violent crime conviction ● High position in a drug distribution hierarchy ● Misused position or status (e.g., fiduciary) ● Sale to minor or vulnerable adult ● Acted for the benefit of a gang ● Separate acts in 3 or more counties ● Importing drugs into MN ● 3 or more separate sales transactions ● Took place in a school zone, park, public housing, treatment center, or correctional facility ● Drugs + weapons = always go to prison
Discharges & dismissals	Mandatory for all those eligible	Eligibility expanded
Conditional Release Program	Eligibility expanded	No change
Funding for treatment (& re-entry services)^b	DOC discretion to spend/give for treatment, offender education, and crime victim services	≤50% for DOC's treatment, supervision, & reentry programs; ≥50% for OJP's treatment, recidivism-reduction, & drug-court grants

Source: Adapted from MN Sentencing Guidelines Commission. (2015, September 23). Current legislative proposals: Presentation to the Prison Population Taskforce.

^a See Appendix E: Changes to Drug Sentencing Legislation for more detailed information about specific drug sentencing policy changes.

^b *Note on research limitations:* Due to limited resources, we were unable to study all aspects of the proposed funding reallocation legislation. In addition to allocating prison bed savings associated with the proposed reforms to substance abuse and mental health treatment services, SF 773/HF 994 would reinvest prison bed savings in offender educational programs and crime victim services, and SF 1382/HF 2107 would require that half of allocated funds be appropriated to probation and supervised release enhancement, recidivism reduction programs, re-entry programs, and drug courts. This HIA assessed the proposed legislation concerning funding for mental health and substance use treatment only.

PREDICTED IMPACTS OF THE PROPOSED DRUG SENTENCING LEGISLATION

This section includes a summary of the predicted direct and indirect impacts of the proposed legislation. Direct impacts of changes to drug sentencing policies involve rates of 1) imprisonment, 2) probation, 3) felony records, and 4) access to substance use and mental health treatment (see Figure 4).

Direct Impacts

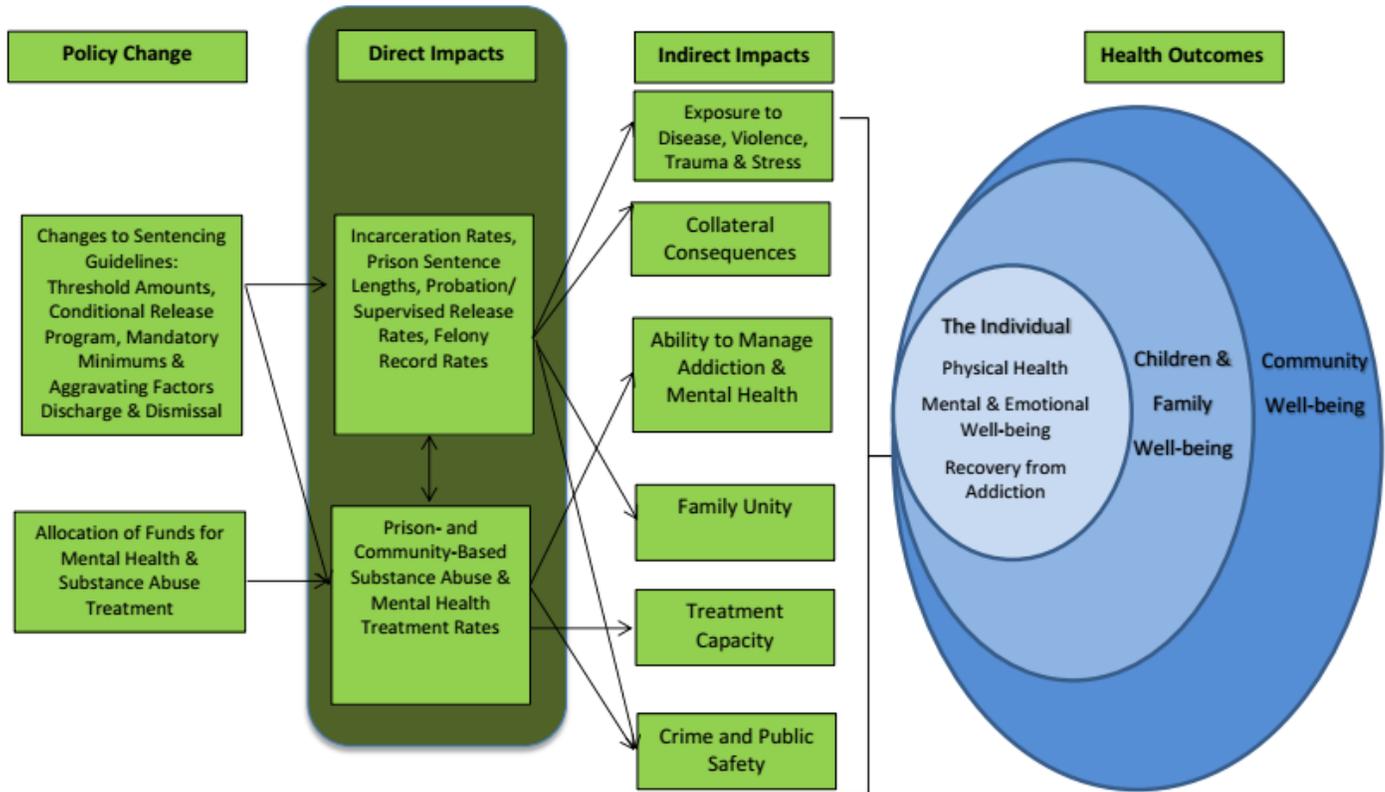


Figure 4: Pathway diagram: Direct Impacts. Pathway diagram of the potential health outcomes associated with proposed Minnesota drug sentencing reform policies

The direct impacts of the proposed legislation are limited to rates of incarceration and probation, length of prison sentences, number of Minnesotans with felony records, and allocated funds for reinvestment, as seen in Table 2. In short, compared to SF 1382/HF 2107, SF 773/HF994 will result in the direct impacts of fewer people in prison, more on probation, shorter prison time, and fewer felony records.

Table 2. Comparison of Direct Impacts of Proposed Legislation

Direct Impact	SF 773/HF 994	SF 1382	HF 2107
Incarceration Rates	0 people may be shifted from probation to prison	24 people may be shifted from probation to prison	40 people may be shifted from probation to prison
Probation Rates	284 people may be shifted from prison to probation	78 people may be shifted from prison to probation	78 people may be shifted from prison to probation
Sentence Lengths	169 people may receive shorter prison sentences	48 people may receive shorter sentences 34 people may receive longer sentences	47 people may receive shorter sentences 33 people may receive longer sentences
Felony Record Rates	1,226 fewer people may have a felony record	38 fewer people may have a felony record	38 fewer people may have a felony record
Reinvestment	\$15.01 million	\$1.1 million	Unknown

Source: Adapted from Preliminary Fiscal Notes and Minnesota Sentencing Guidelines Commission. (2015, September 23). Current legislative proposals introduced during the 89th Minnesota Legislature (2015-16).

Indirect Impacts and Health Outcomes

The direct impacts then feed into the indirect impacts of 1) exposure to disease, violence, and trauma, 2) ability to manage addiction and mental health, 3) treatment capacity, 4) family unity, 5) crime and public safety, and 6) collateral consequences, as displayed in Figure 5.

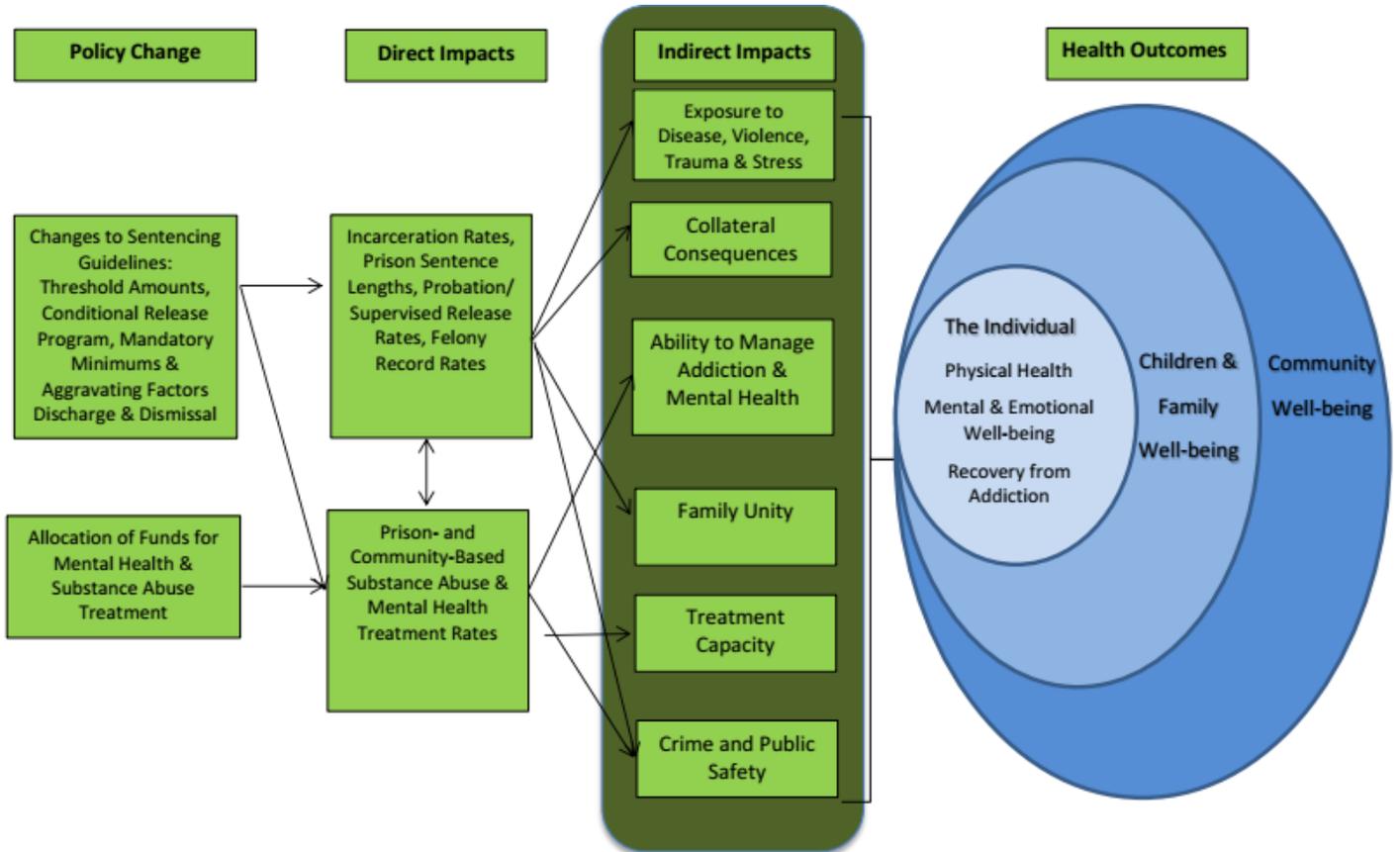


Figure 5: Pathway diagram: Indirect impacts. Pathway diagram of the potential health outcomes associated with proposed Minnesota drug sentencing reform policies.

The assessment analyzed how the proposed policy changes could ultimately impact the physical, behavioral, and emotional health of individuals, families, and the larger community by altering exposure to disease, violence, trauma, and stress; one's ability to manage addiction and mental health; family unity; collateral consequences; and crime and public safety.

Exposure to Disease, Violence, Trauma, and Stress

Rates of incarceration will influence rates of health problems indirectly through exposure to disease, violence, trauma, and stress while in prison. Persons sentenced to probation for drug crimes may not experience the health risks associated with stress, trauma, and exposure to disease and violence to the same degree as those sentenced to prison because those sentenced to prison are incarcerated longer than those who spend time in jail as a part of their probation sentence. While probationers may still live in poverty and in violent neighborhoods, they are exposed to indirect health factors, such as social support of family and friends that can buffer the effects of stress.

Key Findings: Health Outcomes Associated with Exposure to Disease, Violence, Trauma and Stress

Summary: Spending time in prison leads to reduced health as result of greater exposure to disease, violence, trauma, and stress.

Health Inequities

- Since low-income and communities of color have much higher incarceration rates, the negative health impacts of incarceration are concentrated in these communities and perpetuate and exacerbate health inequities.^{86,87,88,89}

Physical Health

- Incarceration is associated with increased rates of infectious disease, stress-induced chronic disease, injury from violence, trauma, and increased mortality rates.^{90,91,92,93,94,95,96}

Recovery from Addiction

- The majority of people who have a substance abuse problem and are incarcerated do not receive treatment⁹⁷. In 2013, only 8% of MN prison beds were for chemical dependency.^{98,99}

Mental & Emotional Well-being

- The trauma and stress associated with incarceration exacerbates existing mental health conditions and causes subsequent mental health issues.^{100, 101, 102, 103}

Community Well-being

- 95% of people who are incarcerated eventually return to the community. When the health of those who are incarcerated are improved, the health of the broader community also improves.¹⁰⁴

What we learned from the stakeholders: Physical health treatment and stress

Physical Health Treatment

People we spoke with who spent time in prison for a drug crime discussed a host of physical health problems that developed or were exacerbated during incarceration. Physical health problems discussed include Hepatitis C, diabetes, and cardiovascular disease. Treatment is lacking, according to many key informants, and this may be due to weak treatment capacity. Drawing boundaries on eligibility for treatment is one way to deal with resource shortages.

One informant was diagnosed with Hepatitis C while incarcerated, but did not receive any treatment while in prison because “the levels of the virus were not considered high enough” to merit treatment. This person also had a persistent bladder problem during her incarceration. She was finally scheduled for surgery, but the scheduled surgery date was set for after her release date.

Stress

People who spent time in prison also described how the psychological stress associated with

incarceration impacted their physical health.

I had a stroke while I was in prison. So it all stemmed from the worry... You know, my mouth was crooked...I had to learn how to drink out of a cup again. I still have trouble with my eye... one opens bigger than the other... I can just look at myself physically and see something wrong with myself, but I know it all stem from this incarceration.

We constantly worry...that does do something to you physical. It breaks down your immune system... You be wondering where the stomach pain comes from, and the headaches and stuff like that. And it stems from [the worry].

Because the seriousness of the nature of the crime and ...the impact of me not being around my kids... and I wasn't going to be able to provide for them...So the stress level was at my highest and ...I started having problems with my blood pressure with like having a fainting feeling...And I had never had problems with my blood pressure in my life..I had never been away from my kids nowhere near that long... It took a toll on my physical health...going through the process of going to courts... I got sentenced to 98 months and I did 63 months... The last two times I wasn't in prison that long.

Ability to Manage Addiction and Mental Health

Access to substance use and mental health treatment services for individuals convicted of a drug crime will influence health indirectly through the ability to manage addiction and mental health problems. Recovery from addiction problems can impact family members and the broader community.

Key Findings: Ability to Manage Addiction & Mental Health and Associated Health Outcomes

Summary: The use of drug courts is the best mechanism to help individuals who are involved with the criminal justice system manage substance use problems. The next healthiest option is probation.

Health Inequities

- Black Americans are more likely to be ineligible for treatment services and drug court because of crime severity, criminal history, or being classified as having behavior issues while in prison or jail. However, there is evidence that people with a violent criminal history can benefit from prison-based treatment and drug court.¹⁰⁵

Recovery from Substance Abuse

- The majority of incarcerated individuals who have a substance abuse problem do not receive treatment.^{106,107,108,109}
- Those who receive treatment in the community have even lower relapse rates.^{110,111}
- Those who participate in drug court have the lowest relapse rates.¹¹²

Mental & Emotional Health

- 3 in 4 people with a substance abuse problem also have a mental health condition.¹¹³

Children & Family Well-Being

- People who are able to manage their addiction and mental health are better able to maintain

stable employment and housing, which are important determinants of family well-being.¹¹⁴

Community Well-Being

- People who successfully complete prison-based treatment have lower relapse rates than those who do not complete treatment.¹¹⁵
- People who are able to manage their addiction and mental health are better able to maintain stable employment and housing, which are important determinants of community well-being.¹¹⁶

What we learned from the stakeholders: Ability to manage addictions and health requires increased treatment capacity

As we learned from the stakeholders we spoke with, the ability to manage addictions and health requires increased treatment capacity. Stakeholders perceive the proposed legislation as potentially impacting the ability to manage addiction and successfully recover from substance abuse or dependence.

In order for treatment to work, as described by a mental health provider, “recovery from addiction takes time... 30-day programs are typically not long enough. Offenders will receive treatment in jail or prison if they are there long enough, but then incarcerating individuals with addiction and mental health problems means they are not really contributing to society or their families.”

Furthermore, it can take up to three months to arrange treatment upon release from prison/jail, hampering the likelihood of success upon re-entry into the community.

A mental health key informant underscored the shortages for treatment and programming for rehabilitation and recovery for women. Assessment, crisis intervention, urinary analysis testing, a women’s healing center, child protection workers, and therapy should be provided under one roof, for example.

Many described the need for better treatment infrastructure, and taking resources from other areas of the criminal justice system is one solution, as described by one court informant. One such model is called the Justice Reinvestment Initiative. Reinvestment programming started in Texas with taxpayers who no longer wanted their dollars to pay for prison beds. Oregon has the Justice Reinvestment Act, which distributes savings from averted prison growth into community-based programming (e.g., community corrections, re-entry programs, addiction treatment, and mental health services). Oregon repurposed an entire prison and now uses the facility for treatment. The Minnesota Speaker of the House recently declined to sign on with the Council of State Government’s Justice Reinvestment Initiative, causing Minnesota to be ineligible for the congressional funds or the technical assistance that were available for the Initiative. Technical assistance for the program is provided by Pew and the Vera Institute. A total of 24 states have signed on to this initiative, but Minnesota has yet to do so.

Treatment Capacity

The 2016 projected budget for the total MN prison operation is \$381,182,000, with \$76,022,000 for health services. The 2016 projected budget for the total MN community services operation is \$121,018,000, with \$23,791,000 for probation and supervised release.¹¹⁷

Treatment capacity, including the ability to respond to addictions and break the cycle involving drugs and crime, will likely be enhanced with the passing of legislation that provides more resources for drug courts and treatment within prisons and jails, and especially in the community. Historically, the ability of Minnesota community services has not matched the need for treatment. The Minnesota Corrections Association reports that there are fewer halfway house beds in Minnesota than there were in 1980, while the prison population has increased dramatically.¹¹⁸ Funding for treatment will directly impact the availability of treatment both within prisons and jails and in the community. While Intensive Supervised Release (ISR) is more costly than traditional probation, which entails less intensive supervision, the net savings of any form of probation are greater compared to prison. ISR costs approximately \$18 per day compared with \$84 per day for prison.^{119,120}

Key Findings: Treatment Capacity and Associated Health Outcomes

Summary: Treatment capacity is lacking for individuals under supervision of the criminal justice system.

Health Inequities

- Black Americans are twice as likely as all other racial groups to have a self-perceived need for substance use treatment.¹²¹

Physical Health Outcomes

- Upon release from prison, incarcerated individuals are likely to experience gaps in needed health care, including prescription medications.^{122,123}

Recovery from Addiction and Mental & Emotional Health

- The majority of people in prison (85-90%) have a substance abuse disorder¹²⁴ and more than half have a mental health issue.¹²⁵
- There is currently insufficient capacity in prison- and community-based substance abuse and mental health treatment programs.^{126, 127, 128,129, 130}
- The majority of incarcerated individuals who have a substance abuse problem do not receive treatment.^{131,132,133,134}
- People with substance abuse problems who are sentenced to probation are more likely to receive treatment than those who are incarcerated.^{135,136,137}
- Those who do receive treatment in the community instead of prison are more likely to stay drug-free and less likely to commit future crimes.^{138,139}
- It is unknown whether addictions will persist or desist. While those offenders who get sentenced to probation have better treatment outcomes,^{140,141,142} offenders who get sentenced to prison are forced to sober up. However, those in prison are not given wrap-around services, unlike drug court offenders who receive more holistic services.

What we learned from the stakeholders: Mental health and addiction rates are dependent on access to interventions

Treatment capacity is weak, as evidenced by the following examples described by key informants. This is a small glimpse into our qualitative evidence, which illustrates the connections between weak treatment infrastructure and the damaging effects it can have on health. The reasons ex-inmates described for why they were denied mental health and substance use treatment while in prison mirrored descriptions provided for why other ex-inmates were denied physical health treatment. It may be that exclusionary practices for psychological, physical, and addiction treatment are used to deal with budgetary and resource shortages.

One impacted community member reported that her addiction was “not severe enough” to earn her a place on the treatment list. She reported that had she been charged for drug possession, as opposed to a drug manufacturing charge, she would have qualified for addiction treatment in prison. She described that it was her type of conviction (manufacturing) that disqualified her from receiving treatment.

Another impacted community member suffered from depression and was prescribed Prozac, but was never provided any mental health support, which may have put her at risk for further substance use problems.

For the facilities that do provide therapy, it is often in a group setting, and not in an individual treatment setting. Drug treatment in prisons and jails mainly consist of the Narcotics Anonymous 12-step approach, while mental health concerns are left untreated. Inmates may feel more comfortable opening up in one-on-one settings because group treatment in prison “is not a safe environment for treatment because ... you’re always on such guard...Honest statements made in therapy can be used against you...You can’t talk about trauma freely.”

Additionally, ex-inmates and treatment providers reported that those who have a history of violence or disruptive behaviors within prison or jail are excluded from group treatment so as to maintain smoother group dynamic interactions. Many individuals who need or would greatly benefit from treatment do not receive it.

The benefit of being incarcerated is that people with addictions are forced to give up their habits, but this in itself creates a false-sense of rehabilitation, as one impacted member described.

[While incarcerated] they might sniff pills, do coffee, might even take up looking at half-naked pictures as some sort of substitute [for the drug]. They might even start eating potato chips and candy. But they’re convincing themselves, ‘well I don’t do cocaine anymore, I don’t do heroin, I don’t do methamphetamine. I’ve been sober, I’ve changed.’

Treatment happens in a vacuum while incarcerated, and often times when the convicted offender is released back into the community, they recidivate because their addiction and potential mental health problems were never properly addressed. Often, an opportunity for treatment and rehabilitation while incarcerated is squandered, as noted by several key informants.

Several key informants highlighted the necessity for culturally-responsive intervention because of its success in treating people. For example, Native Americans in the metro area must go out of state if they want culturally-specific care, as reported by one court informant.

Family Unity

Family support can influence one's ability to manage his/her addiction recovery. Besides emotional support, they can also be a source of financial support, which is especially important for persons with a felony record who face major barriers to employment, housing, and education. The well-being of families of those involved with the criminal justice system matters. As deVuono-Powell et al. (2015) suggest, "It is not enough to reform the criminal justice system without considering its purpose and impact on communities."¹⁴³

Families are differentially impacted, depending on whether a family member is sentenced to prison or probation. Policy that allows for greater family cohesiveness will result in positive health outcomes for individuals who are sentenced for drug crimes, their family, and the larger community.

Key Findings: Health Outcomes Associated with Family Unity

Summary: Community well-being will be positively impacted when all families are healthy. Individuals who are able to maintain ties and have access to their family will experience lower recidivism rates.

Health Inequities

- Compared to White American Minnesota youth, Black American Minnesota youth are four times more likely to have a parent who is incarcerated, Hispanic youth are three times more likely, and Native American youth are four times more likely.¹⁴⁴
- Since low-income communities and communities of color have much higher incarceration rates, the negative health impacts of incarceration to family unity are concentrated in these communities and perpetuate and exacerbate intergenerational poverty, gaps in education achievement, and health inequities.¹⁴⁵

Mental Health & Physical Well-being

- Studies from 1972 to today have found that maintaining close contact with family members while incarcerated greatly improves the health and reentry success of incarcerated people.^{146,147}

Children & Family Well-Being

- In Minnesota, 1 in 6 children have experienced the incarceration of a parent.¹⁴⁸
- Children of incarcerated parents are more likely to experience family and housing instability and be placed in foster care.^{149,150}
- Paternal imprisonment is associated with the reduced educational achievement¹⁵¹ and increased aggression, depression, and anxiety for their children.^{152,153}
- The average debt incurred for court-related fines and fees was \$13,607, and 63% of family members studied were primarily responsible for court-related costs.¹⁵⁴
- Maintaining contact with incarcerated family members led 34% of families into debt to pay for phone calls and visits.¹⁵⁵

- Children who live with an adult with an untreated substance abuse or mental health problem experience stress that can have long-term consequences for health and cognitive development.¹⁵⁶

Community Well-Being

- Maintaining close ties with family during incarceration results in lower recidivism rates following release from prison.^{157,158}

What we learned from the stakeholders: The experience of incarceration and collateral consequences on children and families

Several informants discussed the financial repercussions tied to incarceration of a parent. With probation, they note, convicted offenders are better able to provide financial family support. As one informant noted, “Family finance shouldn’t go to hell because of substance abuse.” One impacted community member has not been able to move back in with his wife and baby because of his felony record. Before prison he had a good-paying job. If he had been in treatment in the community, as opposed to a prison that was too far to visit, his family could have more easily supported his recovery efforts.

One impacted community member, incarcerated for a drug crime, was making the same amount of money in the late 1990s as a health care professional as she is today. She also had problems finding housing, in part due to the trouble she experienced finding a job. She resorted to couch hopping, which led to abuse. Now she has “faced poverty for years” because she can never work as a health care professional again. She and others questioned the practice of not ever being able to get employment again in the field in which they were trained because of a felony record.

Another key informant who was sentenced to prison was described how she has not had the opportunity to see her children since they were three and five years-old, as they were put into foster care and adopted away.

The majority noted the harm incarceration does to children. One educator, described working with children of incarcerated parents. “These kids are not compliant. They have no positive relationships with schools. They’re intimidated. They don’t understand the system. They don’t trust the system.” Furthermore, she noted that they frequently called into school under the guise of being sick, but really had to stay home to take care of a younger sibling while their non-incarcerated parent worked. Incarceration of a parent affects children mentally, economically, and emotionally as indicated by many informants.

Many impacted community members described the ripple effect incarceration has on families. “They couldn’t pay the bills without me.” Another described the experience as “Death... you can’t really move forward...you can’t properly grieve they’re gone because they are still there but they are not there. So you are left in a state of limbo.”

We had such a great relationship [before I was locked up]. But when I left, it’s like, we departed. My youngest son was kind of mad because I wasn’t there for him. His basketball

games, graduating...and it took a toll on him, where he put up a shield.... He just refused to talk to me. But when I came home, I didn't try to jump right in his life. I took baby steps...so he slowly forgave me... He asked "You gonna go back to selling drugs or you gonna get a job?" I said, "I'm gonna work a job." So now we got a good relationship. It took time...they feel like you had a choice when you left them.

Crime and Public Safety

Crime and public safety are indirectly impacted by whether a person is sentenced to prison or probation, and whether they have access to substance use and mental health treatment. Perpetuation of criminal behavior impacts the individual him/herself, their family, and the broader community.

Key Findings: Health Outcomes Associated with Crime and Public Safety

Summary: The use of incarceration to deter crime does not get at the root of the problem and appears to negatively impact public safety.

Community Well-Being

- Contrary to deterrence theory, drug offenders who were sentenced to prison recidivated more so than offenders placed on probation, even when offenders' background characteristics, criminal record, and predicted probability of incarceration are taken into account.^{159,160,161}
- Incarcerated drug offenders have particularly high rates of recidivism,^{162,163} whereas drug offenders sentenced to probation or mandatory drug treatment have lower recidivism rates.¹⁶⁴
- Diversion to substance abuse treatment for low-level, non-violent drug offenders results in lower recidivism rates than incarceration or probation alone,^{165,166} including overall number of rearrests, time to first rearrest, number of rearrests on violent charges, and felony rearrests.¹⁶⁷
- Longer prison terms can actually *increase* recidivism.^{168,169}
- Those who successfully complete prison-based treatment have lower recidivism rates.¹⁷⁰
- Those who receive treatment in the community have even lower recidivism rates.^{171, 172,173, 174}
- Since ISR was established in 1990, the rate of offenders who fail ISR by committing a new felony has consistently remained below 1%.¹⁷⁵
- Those who participate in drug court have the lowest recidivism rates.¹⁷⁶
- Drug court participants who had a violent criminal history were no more likely to recidivate than those who had no violent criminal history.¹⁷⁷
- Drug courts are most effective when serving offenders with long criminal histories.^{178,179}
- Drugs do not cause people to commit violent crimes^{180,181,182}, but serious drug use intensifies and perpetuates pre-existing criminal activity^{183,184,185, 186}
- Drug use is more often associated with property crimes to get money for drugs.^{187,188}
- There is not clear evidence that those who deal drugs and carry a gun are more likely to be violent.^{189,190}
- Research has not found a connection between gun possession and a person's position in a drug network.¹⁹¹

What we learned from the stakeholders: The effects of incarceration versus probation on crime and public safety.

The qualitative results on the impact the proposed legislation could have on public safety is mixed. Many feel that because crime and drug use is already a major problem, and individuals do not seem to be deterred by current drug sentencing laws, public safety would not be compromised by the proposed legislation.

A minority of key informants, particularly some law enforcement officials and prosecutors, fear that public safety will be compromised and drug use and sales will exacerbate if drug sentencing becomes more lenient. One informant described law enforcement as “seeing a sea of drug dealers”. Since law enforcement officers risk their lives, expanding probation may result in police having more encounters with potentially dangerous individuals.

One court informant has not seen public safety negatively impacted by the use of drug courts. In the end, the informant said, people who go through drug courts tend to reoffend less often than the incarcerated population and therefore public safety is improved by diverting them to drug court.

A law enforcement informant noted that arrests are often fueled by a push by law enforcement supervisors for on-the-ground officers to have statistics that makes supervisors look good. This may be due to funding streams that require arrests/services to be high so as to draw in more funding.

Additionally, police and prosecutors work in partnership so as to provide the highest level of evidence possible to prosecute someone. “Cops and prosecutors like undercover work because it’s a done deal,” some law enforcement informants said, “and the evidence is more clear-cut to prosecute.”

Collateral Consequences

Incarceration correlates with negative social and economic outcomes for former prisoners and their families, and it is concentrated in communities already severely disadvantaged and least capable of absorbing additional adversities.

Collateral consequences are legally- and socially-imposed penalties or disadvantages that automatically occur upon a person’s conviction for a felony, misdemeanor, or other offense, and are imposed in addition to the sentence enacted by the court. Collateral consequences include penalties to employment opportunities, public housing assistance, financial assistance, educational loans, family unity, and social connectivity. These collateral consequences present themselves regardless of the severity of the offense and whether or not a person is sentenced to prison or probation because of having a felony record. Collateral consequences are directly tied to social determinants of health. Employment and income have a well-documented positive association with health.^{192,193} While the health impacts of prison and probation vary, neither is free from health consequences. Often, the most serious health impacts are a result of the legal and social consequences of having a criminal record.

Moreover, community resources are often allocated based on population counts. Because of disproportionate minority confinement, their neighborhoods of origin reflect lower population counts, thus reducing resource allocation provided for education, health, and employment opportunities. The

disproportionate arrest and conviction rates for people of color in Minnesota have led to lower population counts in low-income urban communities, while rural areas—where prisons are located, have artificially high population counts. This leaves urban communities of color underfunded for social programs, education, health, and employment opportunities.¹⁹⁴

Key Findings: Health Outcomes Associated with Collateral Consequences

Summary: Employment barriers associated with having a felony record are so sizable that vocational skills training and GED preparation—two reentry services offered prior to release, are insufficient to overcome them.

Health Inequities

- “The likelihood that concentrated incarceration is criminogenic in its effects on low-income communities, especially for people of color, becomes stronger”.¹⁹⁵
- Indeed, poverty is tied to involvement in the criminal justice system, but poor White American Americans do not experience the same degree of entrenchment and barriers upon release into the community as poor Black American Americans.¹⁹⁶
- Women with criminal records are especially impacted,¹⁹⁷ in large part because of lifelong restrictions of working in service sector jobs likely to employ women (i.e., child care and human services).¹⁹⁸ Employers in the service industry employers, which represents the labor market sector most likely to hire women, were the least willing to hire ex-offenders.¹⁹⁹

Physical, Mental, & Emotional Well-being and Recovery from Addictions

- Unemployment compounds health risks over time.²⁰⁰
- The collateral consequences of leaving prison and jail may exacerbate health inequities in the low-income communities to which they return.²⁰¹
- Public policies on employment, drug treatment, housing, and health care often blocked successful reentry into society from jail, which indirectly affects physical and mental health.²⁰²

Children & Family Well-being

- Parental distress around the inability to provide financial resources for their children exacerbates existing mental health problems for formerly incarcerated individuals.²⁰³
- Only 6% of ex-inmates were receiving financial aid, including Temporary Assistance for Needy Families (TANF), one month post-release.²⁰⁴
- 65% of families with an incarcerated member were unable to meet their family’s basic needs.²⁰⁵
- Prison can degrade one’s employability and financial contributions made to their families after release from prison.²⁰⁶
- 18% of families were denied or did not qualify for public housing once their family member returned home from prison.²⁰⁷

Community Well-being

- Barriers to employment, housing, education, public assistance, and the ability to build good credit make it difficult, if not impossible, for individuals with felony records to achieve

economic security.²⁰⁸

- More than 60% of formerly incarcerated individuals are unemployed one year after being released.²⁰⁹
- Five years after release, 67% were still un- or underemployed.²¹⁰
- Having employment and health insurance following release from incarceration are associated with lower rearrest rates and drug use.²¹¹
- Conditional release program participants have reported significant difficulty obtaining employment, which may be due to conditional release programs having limited success meeting vocational skills training and GED preparation goals because of staffing limitations and competing priorities.²¹²

RECOMMENDATIONS

The recommendations are drawn from the findings and are intended to maximize health benefits while minimizing health risks. Advisory Committee members voted on priority recommendations based on the potential of the recommendations to have a sizeable health impact for a large number of people or a significant impact in reducing health inequities experienced by people convicted of drug crimes, their families, and at-risk communities.

Priority Recommendations

Recommendations to Maximize Positive Health Outcomes

The following recommendations aim to reduce exposure to incarceration and its associated health impacts to the greatest extent possible.

State legislators may consider:

- Eliminating mandatory minimums since doing so has been associated with reductions in incarceration rates ranging from 14.5% to 43% in other states and will increase the number of people who can access community-based substance abuse and mental health treatment, which is associated with recovery outcomes, while on probation. In order to ensure that increased judicial discretion does not result in greater sentencing disparities, legislators may further consider amending state law to require that judges be trained in evidence-based sentencing practices.
- Raising drug weight thresholds so that more people will be recommended for probation under the Sentencing Guidelines and will be able to access community-based substance abuse and mental health treatment.
- Expanding drug court capacity and eligibility since drug courts are associated with lower revocation and recidivism rates, shorter prison stays, and reduced rates of relapse.
- Reclassifying some low-level offenses as misdemeanors so that, while still being held accountable for their crime, more people can access jobs, education, and housing.
- Requiring Racial Impact Statements for criminal justice bills in order to identify the potential for unnecessary or unintentional racial disparities in arrest, sentencing, and incarceration rates.
- While ISR is more costly than traditional probation, which entails less-intensive supervision for the latter, the net savings of any form of probation are greater compared to prison. ISR costs approximately \$18 per day compared with \$84 per day for prison.^{213,214}

Law enforcement agencies may consider:

- Making health equity and the analysis of structural inequities, including structural racism, a priority in policing policies and practices.
- Requiring racial impact statements for agency policies, rules, and procedures in order to identify the potential for unnecessary or unintentional racial disparities in arrest rates.

Recommendations to Minimize Negative Health Outcomes

In cases where incarceration is unavoidable, it is in the best interest of everyone, including those who

are incarcerated, their family members, and their communities, that we moderate exposure to health risks and increase access to prevention and treatment services during incarceration.

State legislators may consider:

- Making legislation retroactive in order to maximize the number of people eligible to serve shortened sentences.
- Allocating sufficient funds to expand prison- and community-based substance abuse and mental health treatment services, which are associated with lowered recidivism and relapse rates.
- Allocating additional funds to expand pre-release programming, re-entry services, vocational training, work programs, and educational programming, all of which are associated with reduced recidivism rates.
- Amending state law to reduce collateral consequences to employment in order to promote successful reentry and lower recidivism rates as recommended in the Collateral Sanctions Committee 2008 Report to the Legislature.²¹⁵

The Minnesota Department of Corrections may consider:

- Expanding selection criteria for substance abuse and mental health treatment services, which are associated with lowered recidivism and relapse rates.
- Expanding eligibility for pre-release programming, re-entry services, vocational training, work programs, and educational programming, all of which are associated with reduced recidivism rates.
- Making health equity and the analysis of structural inequities, including structural racism, a priority in departmental policies and practices.
- Requiring Racial Impact Statements for agency policies, rules, and procedures in order to identify potential for unnecessary or unintentional racial and ethnic disparities in program design and delivery, and eligibility standards.

Additional Recommendations to Maximize Positive Health Outcomes

State legislators may consider:

- Designing and implementing a mandatory statewide diversion program based on an appropriate actuarial risk assessment tool. Such an initiative should be enacted in every judicial district and affect all eligible defendants equally.
- Studying the use of proposed aggravating factors to identify how they may unnecessarily or unintentionally exacerbate racial and ethnic disparities in sentencing and incarceration rates.
- Repealing or reforming protected zone laws, which are ineffective and unnecessarily exacerbate racial and ethnic disparities in sentencing and incarceration rates.
- Making deferred prosecution mandatory for low-level, first-time offenders so that all qualified defendants have equal access to protections from conviction records.²¹⁶
- Expanding eligibility for discharge and dismissal to those who have previously been granted a discharge and dismissal so that those who have relapsed will be eligible for community-based treatment and drug court.
- Funding an adequate infrastructure of community-based supervision programs that are evidence-based and focus on rehabilitation and accountability.

- Amending state law to regulate the use of probation revocation and to require the DOC to develop intermediate probation sanctions other than revocation for specific violations.

The Minnesota Department of Human Services, Alcohol and Drug Abuse Division may consider:

- Adopting recommendations to strengthen prevention efforts within and across communities, create more opportunities for early intervention in health care and other settings, integrate the identification and treatment of substance abuse disorders into health care reform efforts, expand support for recovery, and interrupt the cycle of substance abuse, crime and incarceration as put forth in the Minnesota State Substance Abuse Strategy (see Appendix B for the specific recommendations).

The Minnesota Department of Corrections may consider:

- Adopting graduated consequences for technical violations and other evidence-based practices to reduce the number of people on probation who are revoked to prison.

Law enforcement agencies may consider:

- Sharing arrest data to identify and address problematic patterns in policing activities.²¹⁷
- Reforming discriminatory practices around marijuana enforcement, and restructuring funding mechanisms that incentivize low-level arrests.²¹⁸

Additional Recommendations to Minimize Negative Health Outcomes

State legislators may consider:

- Adopting the MSGC recommendation to lower the severity of 1st and 2nd degree drug crimes so that sentence lengths will be substantially shortened.
- Raising drug weight thresholds so that more people will be eligible for shorter presumptive sentences under the Sentencing Guidelines.
- Funding county corrections agencies at a level adequate to allow them to work within their communities to provide work experience to individuals on probation, to support probationers in getting and keeping jobs, and to measure their efforts' impact on recidivism.²¹⁹
- Allocating additional funds to increase the capacity of the Conditional Release Program, which is associated with prison bed savings and lower recidivism rates. In order to increase participation rates, legislators may further consider reducing the required incarceration time and eliminating the statutory requirement to have time spent in treatment added on to one's prison sentence if treatment is failed.

The Minnesota Department of Corrections may consider:

- Expanding selection criteria for the Conditional Release Program in order to increase the number of people who serve shortened sentences as recommended by the Legislative Working Group on Controlled Substances.
- Acting upon the DOC commissioner's commitment to partnering with MDH to advance health equity as stated in the 2014 Advancing Health Equity report to the legislature.
- Taking steps to make family visiting more accessible, affordable, and frequent.²²⁰
- Collaborating with other agencies to expand parenting programming during incarceration and discharge planning.²²¹

- Ending kickbacks to private phone companies and using general funds, instead of phone fees, to cover prison budget gaps in order to make more frequent contact between family members less financially burdensome.²²²
- Incorporating measurement and tracking requirements into legislation in order to assess whether reforms result in decreased sentencing disparities.

The Minnesota Departments of Health and Human Services may consider:

- Setting evidence-based standards for treatment programs administered by the DOC.
- Monitoring DOC compliance with state rules for mental health services as recommended by the Office of the Legislative Auditor.

Local Public Housing Authorities may consider:

- Allowing people who are currently on probation or parole to be eligible for public housing assistance.

Local Municipalities may consider:

- Passing local anti-discrimination ordinances that prohibit housing discrimination against individuals with an arrest or conviction record as has been done in several municipalities in Wisconsin and Illinois.

CONCLUSIONS

The broad conclusions of this assessment suggest that the best health outcomes of persons involved with the criminal justice system for drug offenses, their family, and the larger community will be achieved through decreasing the use of incarceration, and increasing use of community-based treatment, probation, and resources that prevent initial contact with the criminal justice system.

Minnesota's use of incarceration for drug crimes exacerbates racial disparities in our criminal justice system and in our communities, which are some of the starkest in the nation. The continued use of mass incarceration of people who commit drug crimes exacerbates a cycle, whereby their children experience higher rates of depression, anxiety, and drug use and wind up incarcerated themselves at higher rates. A greater use of treatment in the community may help break this cycle.

Because of the high cost to taxpayers associated with incarceration and the damage that incarceration does to the health and well-being of individuals, families, and communities, incarceration for drug crimes may only be justified when the offender is such a threat that only incapacitation will protect the public. Otherwise, the costs may outweigh the benefits. Reducing penalties for drug crimes will save the state money, while also improving the lives and productivity of at-risk individuals and families.

Drug sentencing reform needs to balance accountability and public safety with treatment and recovery in order to maximize positive health outcomes for individuals, families, and the community. Spending on both incarceration and probation depletes resources for programs that increase deterrence and support mental and chemical health. Keeping people out of the criminal justice system in the first place will lead to the greatest improvement to health outcomes and the highest cost savings.

Public safety is improved with probation, as probation is associated with reduced recidivism rates. While probation is often framed or intended as a prison alternative, in practice probation expands the “net” of formal surveillance, and may increase the risk of revocation. Success requires reforming both sentencing and supervision practices.

GLOSSARY OF KEY TERMS

Health Terms

Health: A state of complete physical, social and mental well-being, and not merely the absence of disease or infirmity. Health is a characteristic of both individuals and communities.

Health disparity: A population-based difference in health outcomes (e.g., women have more breast cancer than men).

Health equity: When every person has the opportunity to realize their health potential — the highest level of health possible for that person — without limits imposed by structural inequities. Health equity means achieving the conditions in which all people have the opportunity to attain their highest possible level of health.

Health inequity: A health disparity based in inequitable, socially-determined circumstances. For example, Native Americans have higher rates of diabetes due to the disruption of their way of life and replacement of traditional foods with unhealthy commodity foods. Because health inequities are socially-determined, change is possible.

Social determinants of health: The conditions, in which people are born, grow, work, live, and age, and the wider set of forces and systems, that shape the conditions of daily life. The fundamental conditions and resources for health are: peace, shelter, education, food, income, a stable eco-system, sustainable resources, social justice, and equity. The conditions that influence health outcomes can operate at the individual, interpersonal, community, organizational, and policy levels. When there are disparities in the populations affected by social determinants, health inequities result.

Structural inequities: Structures or systems of society — such as finance, housing, transportation, education, social opportunities, etc. — that are structured in such a way that they benefit one population unfairly (whether intended or not).

Structural racism: The normalization of an array of dynamics — historical, cultural, institutional and interpersonal — that routinely advantage White American people while producing cumulative and chronic adverse outcomes for people of color and American Indians.

Adopted from the Minnesota Department of Health's 2014 Report to the Legislature: Advancing Health Equity, the Preamble to the Constitution of the World Health Organization, and the Ottawa Charter for Health Promotion

Criminal Justice Terms

Aggravating factors: Criteria related to the current offense or the defendant's criminal history that is used to determine the culpability of the defendant and the appropriateness of imposing a harsher sentence. Aggravating factors in drug crimes include prior convictions, committing the crime in a protected zone, such as a school zone, or involving a minor in a drug transaction.

Collateral consequences: Legally- and socially-imposed penalties or disadvantages that automatically occur upon a person’s arrest or conviction for a felony, misdemeanor, or other offense, and are imposed in addition to the sentence enacted by the court. Collateral consequences can include, among other consequences, losing access to job opportunities, and/or becoming ineligible to receive public assistance benefits.

Conditional Release Program: A program administered by the Department of Corrections and available to people convicted of drug crimes who are considered low-risk. Participants are eligible for early release from prison upon successfully completing chemical dependency treatment and other program requirements, such as vocational training and GED-preparation.

Criminal history scores: Criminal history scores are used in sentencing decisions to determine whether or not a person is recommended to prison or probation and the length of their prison sentence according to the sentencing guidelines grid. A person is assigned a certain number of points each time they are convicted of a felony or extended jurisdiction juvenile conviction. The number of points is determined by the severity of the crime. The criminal history score is the sum of all points.

Deferred prosecution: Granted in cases where “a prosecutor requests that the court set aside a case for a specified period, with an agreement that it will be dismissed if the defendant is not rearrested and, sometimes, meets some other condition that will not be supervised by the court. The defendant agrees to give up the right to have the matter resolved speedily and is not required to enter any plea; there is, therefore, no admission of guilt.”²²³ Upon successful completion of the agreed-upon conditions, the case is dismissed and the defendant does not have a record of conviction. If the defendant fails to meet the conditions, violates other probation requirements, or is re-arrested, they must serve the full sentence as required by the guidelines. Deferred prosecution is also known as continuance for dismissal and continuance without a plea.

Departure: Judges may sentence a person to probation when the Guidelines call for prison, or vice-versa, or to a shorter or longer sentence than that recommended under the Guidelines, if the judge finds substantial and compelling circumstances to support a departure.

Disproportionality: The over-representation of a particular group in the criminal justice system relative to the general population. For example, in Minnesota, 19% of people convicted of a felony drug crime are Black American even though Black Americans make up just 6% of the adult population.

Mandatory minimum sentence: If a person is convicted of a felony-level drug crime within ten years of sentence discharge for a previous felony-level controlled substance crime, the court must sentence the offender to prison for not less than the minimum sentence set forth under the Sentencing Guidelines. A court may waive the mandatory minimum sentence for a fifth-degree controlled substance crime if it finds substantial and compelling reasons to do so. A judge may grant a departure from the guidelines for any degree level based on substantial and compelling circumstances.

Revocation: When people violate their conditions of probation, their probation may be revoked, and they may be sent to prison.

Sentencing Guidelines Grid: A set of guidelines developed by the Minnesota Sentencing Guidelines Commission to regulate judicial decisions to impose prison or probation sentences, and the length of those sentences, based on crime severity and criminal history.

Stay of adjudication: Granted in cases in which the defendant pleads guilty, but the court does not accept the guilty plea. Upon successful completion of conditions set by the court, the charge is dismissed and the defendant does not have a record of conviction. If the defendant fails to meet the conditions, violates other probation requirements, or is re-arrested, they may be required to serve the full sentence as required by the guidelines.

Threshold amounts: Drug amount thresholds, in combination with a criminal history score, are used to establish the severity of a drug crime and to determine whether a person is sentenced to prison or probation, and for how long. For example, a person in possession of 5g of cocaine would be charged with a 3rd degree felony and sentenced to probation under the sentencing guidelines while a person in possession of 6g of cocaine would be charged with a 2nd degree felony and sentenced to prison. Total drug amount used in a criminal charge may be accrued over multiple arrests within a 90-day period.

Adapted from the American Bar Association, the Minnesota Judicial Branch, and the Minnesota Sentencing Guidelines Commission.

APPENDIX A HIA METHODOLOGY

Screening

Screening determines a project's feasibility and its potential to impact a decision-making process. An HIA should be conducted within the decision-making time frame and with available resources. As part of the screening process, potential partners work to define a problem, determine what resources are available, and discuss the timing of the project.

Three drug sentencing reform bills were introduced in the 2015 legislative session, though one bill (HF 994) was a companion bill for one introduced in the Senate (SF 773). Another bill that was backed by prosecuting attorneys and law enforcement was introduced at the last minute (SF 1382). A companion bill to SF 1382 was introduced during the fall of 2015 (HF 2107). None of the bills received a hearing in committee. There was bipartisan support in both the House of Representatives and the Senate for the bills. The authors have expressed interest in continuing conversations about drug sentencing reform into the next legislative session for the purpose of introducing legislation again in 2016.

The aim of this HIA was to evaluate the potential health impacts of drug sentencing reform in Minnesota. Current criminal justice policies do not typically examine public health concerns. This HIA intends to move the discussion beyond the criminal justice system and public safety to include its impact on the individuals and communities most touched by the policy. The assessment paid particular attention to the health impacts on communities of color.

We were interested in assessing health impacts of drug sentencing reform for the following reasons:

- Disproportionate impact of the criminal justice system on communities of color.
- Health is typically not considered in the decision making process.
- Legislators and community members are engaging in conversations to guide reform in the near future.
- The availability of resources for the CCJ and Nexus Community Partners to complete the assessment ahead of the next legislative session.
- The vast network of partners available to participate in and inform the recommendations that will result from this project.

HIAs are used to understand the implications of proposals for the health of vulnerable populations including low-income people and communities of color. Where the potential exists for disparate impacts, HIA recommendations have been proposed to promote better health outcomes for these vulnerable communities. HIAs support community engagement and legitimize the participation of those individuals typically excluded from decision-making processes. This HIA is no exception and focuses on communities experiencing the most significant consequences of drug sentencing policy in Minnesota.

Scoping

Scoping determines what issues are going to be studied, which populations will be included in the study, and the methods that will be used to conduct the HIA. The potential areas of focus (indirect impacts and health outcomes) were identified in collaboration with key stakeholders, including persons formerly incarcerated for drug crimes, policymakers, public health officials, mental health providers, substance

abuse experts, social services providers, probation officers, judges, prosecutors, public defenders, and law enforcement officials.

The legislation under evaluation essentially comprises two competing senate bills with a multitude of nuances. Given the shortened timeframe of this project and very limited resources, we attempted to focus just on the bills' impacts on probation and health, thus addressing issues faced by the majority of convicted drug offenders in Minnesota and shedding light on an understudied area of criminal justice. Furthermore, Minnesota is one of the few states that heavily relies on probation to divert convicted drug offenders from incarceration. Only 27% of all drug offenders in Minnesota were sentenced to prison in 2013, while the number of drug offenders placed on probation increased by 89% between 1991 and 2013. We are now living in the "age of mass probation."²²⁴ However, much of the political dialogue and research literature focuses on incarceration, making the examination of probation difficult. Additionally, when community members were interviewed, probation was not probed and so no qualitative data were collected on probation. Furthermore, many people who get sentenced to probation are required to serve out the first portion of their time in jail, followed by serving out the remainder in the community. Thus, probation is not mutually exclusive from incarceration.

At our first advisory meeting in August, each advisory member indicated one to two indirect impact(s) on which they wanted the HIA to focus. Indirect impacts are the downstream impacts of direct impacts. Direct impacts are downstream from the policy changes. Since the direct impacts of the policy changes were straightforward, we chose to focus our time on developing the indirect impacts. The tallies from this advisory meeting for each indirect impact were taken, and the impacts with the lowest rates were excluded from the focus of this project.

Mental health problems are defined as emotional and behavioral problems, such as PTSD, anxiety, depression, paranoia, and eating and sleeping disorders. Substance use problems are defined as drug abuse and dependence. The sentencing bills with which we are concerned focus only on drugs and not alcohol. Physical health problems are defined as acute and chronic conditions, including infectious diseases, and injuries, as well as mortality.

Research questions were aimed at assessing existing, or baseline conditions of people who are sentenced to incarceration or probation. Rates of mental health, substance use, physical health, and public safety problems were assessed for incarcerated individuals and probationers. Treatment rates for mental, substance use, and physical problems were assessed for incarcerated individuals and probationers.

Indicators were drawn from stakeholder input provided during the second and third advisory committee meetings. Our second advisory committee meeting focused on solidifying indicators for ways in which direct, indirect, and health impacts would be measured. During the third advisory committee meeting, the highest-value indicators (based on qualitative research findings) were prioritized for the assessment phase.

Literature Review

Over 200 sources were reviewed for this assessment, including peer-reviewed research studies, government reports, and reports from criminal justice and public health think-tanks. The goal of the literature review was two-fold: 1) to gather scientific evidence of the health outcomes (e.g., infectious or chronic disease, injury, addiction, mortality) and inequities associated with incarceration, probation,

felony records, and access to mental health and substance abuse treatment services within the criminal justice system, and 2) to identify the determinants of the associated health outcomes (e.g., exposure to infectious disease, trauma, collateral consequences, access to treatment).

During the public workshop held in June, participants identified a list of health determinants for study. These determinants fell into three broad categories and included: System Impacts (jail/prison beds, probation caseloads, and treatment capacity), Daily Life Impacts (housing, education, employment, and family unity), and Public Safety Impacts (recidivism rates, revocation rates, and crime rates). At the first meeting of the advisory committee in August, the list of priority indicators was further refined. Based on committee member votes, the decision was made to focus the literature review on the potential impact of proposed legislation to the following health determinants: probation caseloads, treatment capacity, employment, family unity, societal exclusion, recidivism rates, and revocation rates. The findings from the initial literature review were shared with the project team, the advisory committee, and technical assistance provider. Additional research literature was then identified to fill in gaps in evidence.

Scientific literature on the prioritized health determinants and the health risks and outcomes associated with contact with the criminal justice system were located by searching the following electronic databases: PubMed, Web of Science, the Cochrane database of Systematic Reviews, Google Scholar, Sociological Abstracts, Social Works Abstracts, and HEIN Online. The searches included articles published through August 2015.

In addition, evaluations and reports published by the Minnesota Department of Corrections, Minnesota Sentencing Guidelines Commission, Minnesota Department of Health, and Minnesota Department of Human Services were used to gather information on the existing baseline conditions of contact with the criminal justice system and health outcomes of the criminal justice population in Minnesota. Reports published by the National Conference of State Legislatures (NCSL), United States Sentencing Commission, the Bureau of Justice Statistics, the Federal Bureau of Prisons, Vera Institute of Justice, The Sentencing Project, the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Centers for Disease Control and Prevention (CDC) provided national context. In order to identify additional research, reference lists of key articles were manually searched.

Key Informant Interviews

A content analysis was conducted to identify themes that emerged during interviews with key stakeholders. Forty-four interviews were conducted with key informants by the two authors. These drug sentencing stakeholders included five policy makers, three substance use and mental health treatment providers, seven court professionals, two law enforcement professionals, three probation officers, 13 ex-inmates, 10 family members of incarcerated individuals, and one youth worker. The majority of interviews were individual face-to-face interviews. A small minority were conducted over the phone or via focus-group. Interviews were audio-recorded and transcribed either verbatim or with detailed notes.

Interviewees were provided with operational definitions of health (i.e., mental health, including substance abuse and dependence, trauma, anxiety, depression, and physical health—cardiovascular, diabetes, STDs, etcetera), but were also invited to share their own definition of health. They were probed for their perspectives on the health impacts of incarceration and probation, as well as for whether convicted offenders needed and received treatment in prison, jail, or probation and whether the treatment (if received) helped any. They were also asked about whether they felt drug sentencing

reform was necessary to improve individual, family, and community well-being, and any specific recommendations, barriers, and facilitators that may exist in the realm of personal and community health as it relates to drug crimes and interventions. Questions were tailored to the stakeholder. A sample of standard questions we asked is included below.

Questions for professionals working in the system:

Do you think the majority of drug offenders have serious substance use problems?

What kinds of effects do you think current drug sentencing practices are having on the behaviors of drug offenders?

What kinds of effects do you think current drug sentencing practices are having on the health of drug offenders (and their families)?

How would the proposed legislation change your interaction and contact with community members who have substance use problems or are affected by substance use problems?

How do you think behaviors on drug offenders (and their families) will be different if drug sentencing reforms are passed?

How do you think reducing drug offender recidivism would best be accomplished?

How do you think proposed changes will impact caseload and work flow for yourself and other court professionals?

Questions for family members:

How has having an incarcerated family member impacted your life and the life of your family?

Did your family member's experience in prison change their drug or alcohol use? Did it change how their use impacted you and your family?

Do you live in a community where a lot of people have been incarcerated? If so, what kind of impact do you think that has had on your community?

Do you have any suggestions for lawmakers or service providers?

Questions for persons convicted of a drug offense:

Has prison, jail, and/or probation impacted your physical health? If so, how?

If you have experienced stress, depression, anxiety, or other types of mental health related problems, did your experience in prison help with that in any way? Was it detrimental? How so?

How has having a felony conviction impacted your life since you have been back in the community following your release?

APPENDIX B

MINNESOTA STATE SUBSTANCE ABUSE STRATEGY RECOMMENDATIONS

Below are selected recommendations from the *Minnesota State Substance Abuse Strategy*, developed under the leadership of the Minnesota Department of Human Services in partnership with the Department of Education, Department of Health, Department of Public Safety, State Judicial Branch, Department of Corrections, Department of Military Affairs/Minnesota National Guard, and Minnesota Board of Pharmacy. The full list of recommendations and rationale for each proposal can be found be at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6543-ENG>

Create more opportunities for early intervention in health care and other settings. This will be accomplished by:

- Integrating routine substance abuse screening including the use of the Prescription Monitoring Program into all health care settings and improving the skills of health care providers so they can identify high risk substance use and intervene at the earliest point possible.
- Requiring Screening, Intervention, and Referral to Treatment (SBIRT) at all emergency care settings, and
- Incorporating SBIRT Plus into all primary care practices in the state.

Integrate the identification and treatment of substance use disorders into health care reform efforts. This will be accomplished by:

- Ensuring adequate access to and coverage for addiction treatment services and that health care reform in Minnesota creates benefits for addiction treatment that are on par with treatment benefits for other chronic diseases thereby enforcing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008
- Ensuring that the Health Care Home and Health Home models in Minnesota encompass the medical management of behavioral health care needs, including addiction treatment and recovery support services.

Expand support for recovery. This will be accomplished by:

- Fostering and expanding the development of recovery schools, community-based recovery organizations, and other creative private and public partnerships for the provision of recovery support services and networks throughout the state.
- Ensuring adequate access to recovery support services for people in recovery, especially those transitioning into communities from institutional settings such as prisons, jails, mental health centers, and residential treatment facilities.

Interrupt the cycle of substance abuse, crime and incarceration. This will be accomplished by:

- Expanding effective prison-based treatment and access to treatment services at additional correctional settings, including local jails and county workhouses for juvenile and adult populations.
- Expanding and continuing the support of drug courts and other specialty courts in Minnesota.

Reduce trafficking, production and sale of illegal drugs in Minnesota. This will be accomplished by:

- Maximizing federal and state support for multi-jurisdictional drug task forces.
- Enhancing and expanding training for law enforcement about emerging drug threats so that they can most effectively adapt their investigative tools.

Measure with accurate and timely data the emerging nature and extent of substance abuse and scientifically evaluate the results of various interventions. This will be accomplished by:

- Producing and widely disseminating an annual “State of the State” substance abuse report card, a quantitative, analytical assessment of substance abuse-related activities and spending in Minnesota using various public data sources.
- Continuing the administration of ongoing population-based and other relevant data efforts including but not limited to the Minnesota Student Survey, the Behavioral Risk Factor Surveillance System, the Hennepin Regional Poison Center, and the Drug and Alcohol Abuse Normative Evaluation System.

APPENDIX C MN SENTENCING GUIDELINES

Current Guidelines

Minnesota Sentencing Guidelines Commission

Standard Sentencing Guidelines Grid – Effective August 1, 2013

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime,</i> <i>2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ²
<i>Controlled Substance Crime,</i> <i>3rd Degree</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

Proposed Guidelines
Minnesota Sentencing Guidelines Commission
Revisions to Sentencing Guidelines Grid, Adopted December 2015
Revisions will take effect August 1, 2016, unless vetoed by the legislature

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> <i>(intentional murder; drive-by-shootings)</i>	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480</i> ²	426 <i>363-480</i> ²
<i>Murder, 3rd Degree</i> <i>(unintentional murder)</i>	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree; Controlled Substance Crime, 2nd Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> ^{2,3}
<i>Controlled Substance Crime, 3rd Degree</i> <i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary; Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

Effective August 1, 2016

**APPENDIX D
COMPARISON OF EXISTING AND PROPOSED DRUG LAWS**

LAW	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
152.01 Definitions				
subd. 10. Narcotic drug			Cocaine and heroin added.	Broader list of applicable drugs.
subd. 16a. Subsequent or controlled substance conviction			Redefines definition of subsequent controlled substance conviction.	Misdemeanor convictions count, stays of adjudication do not.
subd. 24. Aggravating factors			Creates this subdivision.	Substance crimes now subject to a defined list of aggravating factors. Question: Does "include" mean the list is not exhaustive?
152.021 Controlled substance crime in the first degree	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 1. Sale crimes	Eliminates separate offense with a lower threshold amount for crimes involving the sale of cocaine, heroin, or meth.	Makes it harder to be convicted of a first-degree offense for crimes involving the sale of cocaine, heroin, or meth by raising threshold from 10 g to 50 g.	Creates separate first-degree offenses for crimes involving the sale of heroin, with a smaller threshold amount for heroin than for other drugs. Lowers the threshold amount of marijuana needed for a first-degree offense and creates an aggravated offense for sale of marijuana.	Makes it harder to be convicted of a first-degree offense for crimes involving the sale of narcotic drugs other than heroin by raising threshold from 10 g to 35 g. Makes it easier to be convicted of a first-degree offense for crimes involving the sale of marijuana by lowering threshold from 50

				kg to 25 kg.
subd. 2. Possession crimes	Eliminates separate offense with a lower threshold amount for crimes involving the possession of cocaine, heroin, or meth.	Makes it harder to be convicted of a first-degree offense for crimes involving the possession of cocaine, heroin, or meth by raising threshold from 25 g to 500 g.	Creates separate first-degree offenses for crimes involving the possession of heroin, with a smaller threshold amount for heroin than for other drugs. Lowers the threshold amount of marijuana needed for a first-degree offense and creates an aggravated offense for possession of marijuana.	Makes it harder to be convicted of a first-degree offense for crimes involving the possession of narcotic drugs other than heroin by raising threshold from 25 g to 50 g. Makes it easier to be convicted of a first-degree offense for crimes involving the possession of marijuana by lowering threshold from 100 kg to 50 kg.
subd. 2a. Methamphetamine manufacture crime	This subdivision is removed.	There is no longer a separate first-degree offense for the manufacturing of meth.		
subd. 3. Penalty	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	No longer mandates imprisonment for first-degree subsequent convictions. No longer allows longer prison sentences for first-degree subsequent convictions.	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	No longer mandates imprisonment for first-degree subsequent convictions. No longer allows longer prison sentences for first-degree subsequent convictions.
subd. 4. Aggravated			Creates new offense.	Raises the max

controlled substance crime in the first degree			circumstances include previous drug offense, drug amounts, and defined “aggravating factors” such as prior crime of violence, benefit of gang, school/park/public housing, etc.	penalty from 30 to 40 years. And mandatory commit to DOC.
152.022 Controlled substance crime in the second degree	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 1. Sale crimes	Eliminates separate offense with a lower threshold amount for crimes involving the sale of cocaine, heroin, or meth.	Makes it harder to be convicted of a second-degree offense for crimes involving the sale of cocaine, heroin, or meth by raising threshold from 3 g to 10 g.	Creates separate second-degree offenses for crimes involving the sale of heroin, with a smaller threshold amount for heroin than for other drugs. Lowers the threshold amount of marijuana needed for a second-degree offense and creates an aggravated offense for sale of marijuana.	Makes it harder to be convicted of a second-degree offense for crimes involving the sale of narcotic drugs other than heroin by raising threshold from 3 g to 10 g. Makes it easier to be convicted of a second-degree offense for crimes involving the sale of marijuana by lowering threshold from 25 kg to 10 kg (or 5 kg with aggravating factor).
subd. 2. Possession crimes	Eliminates separate offense with a lower threshold amount for crimes involving the possession of cocaine, heroin, or meth.	Makes it harder to be convicted of a second-degree offense for crimes involving the possession of cocaine, heroin, or meth by raising threshold from 6 g to 50 g.	Creates separate second-degree offenses for crimes involving the possession of heroin, with a smaller threshold amount for heroin than for other drugs. Lowers the threshold amount of marijuana	Makes it harder to be convicted of a second-degree offense for crimes involving the possession of narcotic drugs other than heroin by raising threshold from 6 g to 25 g.

			needed for a second-degree offense and creates an aggravated offense for possession of marijuana.	Makes it easier to be convicted of a second-degree offense for crimes involving the possession of marijuana by lowering threshold from 50 kg to 25 kg (or more than 100 plants).
subd. 2a. Methamphetamine manufacture crime	Creates this subdivision.	There is now a separate second-degree offense for the manufacturing of meth.		
subd. 3. Penalty	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	No longer mandates imprisonment for second-degree subsequent convictions. No longer allows longer prison sentences for second-degree subsequent convictions.	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	No longer mandates imprisonment for second-degree subsequent convictions. No longer allows longer prison sentences for second-degree subsequent convictions.
subd. 4. Aggravated controlled substance crime in the second degree			Creates new offense. circumstances include previous drug offense, drug amounts, and defined "aggravating factors" such as prior crime of violence, benefit of gang, school/park/public housing, etc.	Raises the max penalty from 25 to 40 years. And mandatory commit to DOC.
152.023 Controlled	PROPOSED CHANGE	EFFECT OF	PROPOSED CHANGE	EFFECT OF

substance crime in the third degree	UNDER SF 773	PROPOSED CHANGE	UNDER SF 1382	PROPOSED CHANGE
subd. 2. Possession crimes	Eliminates separate offense with a lower threshold amount for crimes involving the possession of cocaine, heroin, or meth.	Makes it harder to be convicted of a third-degree offense for crimes involving the possession of cocaine, heroin, or meth by raising threshold from 3 g to 10 g.	Eliminates separate offense with a higher threshold amount for crimes involving the possession of narcotics other than cocaine, heroin, or meth. Adds "50 or more plants" as an alternative amount of marijuana for which a person can be convicted of a third-degree possession offense.	Makes it easier to be convicted of a third-degree possession offense generally by lowering the threshold for all narcotic drugs to 3 g (the amount previously reserved for cocaine, heroin, and meth). Makes it easier to be convicted of a third-degree offense for possession of marijuana.
subd. 3. Penalty	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	No longer mandates imprisonment for third-degree subsequent convictions. No longer allows longer prison sentences for third-degree subsequent convictions.	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction.	No longer mandates imprisonment for third-degree subsequent convictions.
152.024 Controlled substance crime in the fourth degree	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 3. Penalty	Removes language requiring commission to a correctional	No longer mandates imprisonment for fourth-degree subsequent	Removes language requiring commission to a correctional authority if the conviction is a	No longer mandates imprisonment for fourth-degree subsequent

	authority if the conviction is a subsequent controlled substance conviction. Removes language allowing for a longer prison sentence.	convictions. No longer allows longer prison sentences for fourth-degree subsequent convictions.	subsequent controlled substance conviction.	convictions.
152.025 Controlled substance crime in the fifth degree	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 1. Sale crimes	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction. Removes language allowing a larger fine to be imposed if the conviction is a subsequent controlled substance conviction.	No longer mandates imprisonment for fifth-degree subsequent convictions. No longer allows a greater fine to be imposed for fifth-degree subsequent convictions.	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction.	No longer mandates imprisonment for fifth-degree subsequent convictions.
subd. 2. Possession and other crimes	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction.	No longer mandates imprisonment for fifth-degree subsequent convictions. No longer allows a greater fine to be imposed for fifth-degree subsequent	Removes language requiring commission to a correctional authority if the conviction is a subsequent controlled substance conviction.	No longer mandates imprisonment for fifth-degree subsequent convictions.

	Removes language allowing a larger fine to be imposed if the conviction is a subsequent controlled substance conviction.	convictions.		
152.026 Mandatory sentences			Removes offenses which would no longer trigger mandatory prison sentences and ineligibility for supervised release.	Simply cleans up the language by removing offenses no longer applicable.
152.18 Discharge and dismissal	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 1. Deferring prosecution for certain first time drug offenders	Makes stay of adjudication law for low-level offenders mandatory.	Would expand use of stay of adjudication, allowing offenders to avoid the record of a conviction.	Expands eligibility for 152.18 dispositions by limiting definition of prior controlled substance conviction.	Would allow judges to sentencing repeat low level offenders to 152.18 dispositions on subsequent cases.
244.0513 Conditional release of nonviolent controlled substance offenders; treatment	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 2. Conditional release of certain nonviolent controlled substance offenders	Expands nonviolent controlled substance offender conditional release program.	Eligibility had been limited to select controlled substance offenses, would now include all chapter 152 offenses.		
241.90 Community Justice Reinvestment Account			Creates account in state treasury for savings from CJS reforms.	Money in account must be used for treatment, education,

				reentry programs, community supervision and specialty courts.
244.10 Sentencing hearing; deviation from guidelines	PROPOSED CHANGE UNDER SF 773	EFFECT OF PROPOSED CHANGE	PROPOSED CHANGE UNDER SF 1382	EFFECT OF PROPOSED CHANGE
subd. 5a. Aggravating factors			Makes changes to list of factors that can be used for an aggravated departure from the sentencing guidelines.	Expands firearm factor to include accomplices; adds for benefit of gang; removes high degree of sophistication, manufacture for use by others, and quantities substantially larger than personal use.

APPENDIX E

CHANGES TO DRUG SENTENCING LEGISLATION

Thresholds Amounts

Under current Minnesota law, drug weight thresholds, in combination with a Criminal History Score, are used to establish the severity of a drug crime and to determine whether a person is sentenced to prison or probation, and for how long. Drug weight is also used to establish intent to sell and can be punished as such even if the drug in possession was meant for personal use. Legislation that increases the threshold for possession or sale of a drug would result in conviction for a higher amount of drug. Legislation that decreases the threshold for possession or sale of a drug would result in conviction for a lower amount of drug.

SF 773 would:

- Increase threshold amounts for 1st and 2nd degree sale or possession of cocaine, heroin, and methamphetamine.
- Make no changes to thresholds for any degree level for sale or possession of marijuana, “other” narcotics, or amphetamine, phencyclidine, or hallucinogen.
- Make no changes to thresholds for 4th and 5th degree drug offenses.

SF 1382 and HF 2107 would:

- Increase threshold amounts for 1st and 2nd degree sale or possession of all narcotic drugs *except for heroin*.
- Lower threshold amounts for 1st and 2nd degree sale or possession of marijuana.
- Lower thresholds for 3rd degree possession of narcotics other than heroin.
- Add thresholds for marijuana plants.

Mandatory Minimums Aggravating Factors

Mandatory minimum sentencing laws refer to the minimum length of sentencing time that judges cannot lower, no matter what the context or special circumstances of drug crime at hand. Mandatory minimums limit judicial discretion to sentence a defendant based on the individual’s circumstances. Under Minnesota law, if a person is convicted of a felony-level drug crime within ten years of sentence discharge for a previous felony-level controlled substance crime, the court must sentence the offender to prison for not less than the minimum sentence set forth under the Sentencing Guidelines. A court may waive the mandatory minimum sentence for a fifth-degree controlled substance crime if it finds substantial and compelling reasons to do so. A judge may grant a departure from the guidelines for any degree level based on substantial and compelling circumstances. There is a formal process with defined criteria for making a sentence harsher, but to make a sentence lighter requires a far less well defined “waiver or departure”, with no equivalent set of mitigating circumstances, such as addiction, poverty, and abuse or neglect histories.

Aggravating Factors

Aggravating factors are considered in mandatory minimum sentencing decisions. Aggravating factors are any fact or circumstance that increases the severity or culpability of a criminal act. Aggravating factors include recidivism, amount of harm to the victim, or committing the crime in front of a child, among many others. Under current Minnesota law, aggravating factors include the sale of an illegal controlled substance in a school zone, park zone, public housing zone, or drug treatment facility, or the involvement of a minor in a drug transaction. When an aggravating factor is present, the offense is

subject to lower thresholds and sentenced more harshly. For example, the standard threshold amount for a 1st degree marijuana sale conviction is 50kg or more, but when the sale occurs in a protected zone, the threshold amount is reduced to 25kg or more. Changes to mandatory minimums and aggravating factors under the proposed legislation involve the following.

SF 773 would:

- Eliminate mandatory minimums for all drug offenders who have prior offenses, regardless of the sentencing degree (1st-5th).
- Make no changes to aggravating factors.

SF 1382 and HF 2107 would:

- Create a new offense category for aggravating factors.
- Expand the list of aggravating factors to include possession of a firearm or dangerous weapon by either the defendant or an accomplice, prior violent crime conviction, prior drug conviction, high position in a drug distribution hierarchy, misuse of a position or status, sale to a minor or vulnerable adult, acting for the benefit of a gang, importing drugs into Minnesota, separate acts of sale or possession in 3 or more counties, 3 or more separate sales, and sale or possession within a school zone, park zone, public housing zone, treatment center, or correctional facility.
- No longer allow judges to grant a waiver or departure to 1st or 2nd degree offenders with a prior drug conviction or 2 or more aggravating factors. 1st degree offenders who have any prior 1st or 2nd degree drug convictions, or who have two aggravating factors, will have to serve at least 4 years in prison and 2nd degree offenders who have any prior 1st or 2nd degree drug convictions, or who have two aggravating factors, will have to serve at least 3 years in prison.
- Eliminate mandatory minimums for 3rd through 5th degree subsequent offenses.
- Increase the maximum sentence length for 1st and 2nd degree offenders with a prior drug conviction or two or more aggravating factors to 40 years (up from the current 25 years for 2nd degree offenses and 30 years for 1st degree offenses).

Aggravating Factors

The use of aggravating and mitigating factors is considered a “smarter sentencing” approach, when compared with thresholds, because they establish more objective identifying criteria intended to target the most culpable drug offenders, including violent offenders and traffickers, and focus the limited resources of law enforcement and corrections on the most dangerous offenders in order to more effectively promote public safety.

Research conducted by the United States Sentencing Commission on convictions of federal felony-level drug offenders revealed that punishments originally designed for importers, wholesalers, high-level supervisors, managers, and growers/manufacturers involved in extensive drug activity or enterprises were equally likely to be applied to street-level dealers, mules, couriers, and brokers due to the over-reliance on drug thresholds linked to offense severity.²²⁵ As a result of concerns about drug sentencing guidelines failing to target the most dangerous drug offenders, the 2010 Fair Sentencing Act (FSA) added enhanced penalties for 14 possible aggravating factors and reduced penalties for 3 possible mitigating factors applied to drug offenses. Subsequently, the 2014 Smarter Sentencing Act (SSA) reduced drug thresholds in order to further the reliance on aggravating and mitigating factors when determining the severity of a drug offense.²²⁶ The FSA aggravating factors include possession of a firearm, use of violence during the offense, and maintaining a premise for the manufacture or distribution of an illegal controlled substance, among others.²²⁷ The FSA mitigating factors seek to protect less culpable

defendants such as women who commit a drug offense under threat or coercion from an intimate partner or family member or addicts who participate in low-level functions in exchange for drugs to feed their addictions.²²⁸ (See Appendix F: Aggravating and Mitigating Offense Characteristics) for the full list of aggravating and mitigating offense characteristics included in the United States Sentencing Guidelines § 2D1.1).

Furthermore, the Fair Sentencing Act set forth definitions for “aggravating role” and “mitigating role” in order to better distinguish levels of culpability based on knowledge or understanding, function, financial benefit, and level of involvement in extensive criminal drug activity or an enterprise.²²⁹ Those with minimal or minor involvement in extensive activity or an enterprise are thought to play a mitigating role. For example, an offender whose role is limited to transporting or storing drugs would be considered a minimal participant.²³⁰

Research has concluded that protected zone laws have grossly disproportionate impacts on people of color and low-income people who are more likely to live in dense urban areas where protected zones are clustered.²³¹ Research has shown that protected laws are apt to result in lower-level street dealers receiving sentences intended for more dangerous offenders and to deepen racial disparities in incarceration rates. All studies on drug-free zones have found that they have no deterrent effect.^{232,233}

All 50 states and Washington, D.C. have established drug-free school zone laws, and most have established other protected zones, such as parks, public housing, and treatment facilities.²³⁴ As noted above, Minnesota law currently enhances sentencing for sales conducted in protected zones.

The intention of drug-free zones is to protect children and vulnerable adults from drug activity; however, studies commissioned in several states, including Connecticut, Delaware, Massachusetts, New Jersey, and Utah, of the sentencing outcomes associated with drug-free zone laws have found that they are often too vaguely written or too broadly applied to be effective.^{235,236} The Massachusetts study found that fewer than 1% of convictions for offenses committed in drug-free zones actually involved sales to minors, and in Connecticut, the rate was less than 1%. Furthermore, researchers found that most of the protected-zone drug offenses in both states had occurred outside of school hours.^{237, 238} In Utah, most convicted drug sales in a school zone were actually conducted in a private residence that happened to fall within the zone.²³⁹

Since 2010, nine states have revised their definition of a school zone so as to reduce disproportionate sentencing outcomes.^{240,241} Most states that have enacted reforms have limited protected zones to a distance of 300 feet. Limiting the zone size helps to reduce disproportionate impacts on urban communities. Further, it helps to ensure that the offender intentionally committed the offense in proximity to children and is deserving of an enhanced punishment. Minnesota’s definition of all protected zones, including school zones, is designated at 300 feet.

Further, some states have added circumstantial factors, such as time of day the offense occurred, whether the offense took place in a private or public place, and whether children were present, to help ensure that only offenders who intended to sell to children or who exposed children to risk of harm, are subjected to enhanced penalties.

As research has revealed the unintended consequences of drug-free zone laws, there has been a national trend to refine such laws so that they better achieve their original intent.²⁴² Research

conducted by DePauw University in Indiana revealed that 75% of drug offenders subjected to enhanced sentences under the drug-free zone statute were Black American.²⁴³ Moreover, they found that the drug-free zone law had no deterrent effect.

As a result of these findings, Indiana lawmakers removed public housing from the state's definition of drug-free zones and amended statute to specify that its school zone law applies only "when children are reasonably expected to be present."²⁴⁴ Several other states have moved to apply an exception to their laws if the offense occurs within a private residence so long as no children are present.²⁴⁵ In rare cases, drug-free zone laws have been eliminated altogether. Since revisions to drug-free zones are a relatively new trend, more research is needed to understand the extent to which they reduce sentencing disparities and improve public safety.

Mandatory Minimums

Based on the belief that these offenders are a threat to public safety and are not amenable to rehabilitation, SF 1382 and HF 2107 would harden mandatory minimums for 1st and 2nd degree drug crimes.

The decision about whether or not to get rid of mandatory minimums altogether or to keep them for certain offenders is important because it determines who can go to drug court and who can get community-based treatment. Often, drug abusers and addicts need to complete treatment multiple times in order to be successful. Getting rid of mandatory minimums will mean that more people who are struggling with addiction will have more than one chance to get community-based treatment while serving time on probation. However, there will be regional disparities since not all counties in Minnesota have drug courts.

Conditional Release Program

The Conditional Release Program is administered by the Department of Corrections. Participants are eligible for early release from prison upon successfully completing chemical dependency treatment and other program requirements, such as vocational training and GED-preparation. Eligibility for Minnesota's Conditional Release Program is currently limited to non-violent controlled substance offenders who committed their crime because of a controlled substance addiction. To be eligible, offenders may not be sentenced for the sale of drugs. Offenders with other active sentences or detainers, or who have been convicted or adjudicated delinquent of a violent crime within the last 10 years, are ineligible. Offenders who exhibit behavioral problems (including disciplinary problems while incarcerated), or are deemed to be a security threat are not eligible. Participants must successfully complete chemical dependency treatment and 36 months or one-half of the term of imprisonment, whichever is less. Offenders who fail treatment are required to have the time spent in the program added to their term of imprisonment. Upon release, participants are placed under ISR and must submit to a period of electronic or home monitoring.

Changes to the Conditional Release Program under the proposed legislation would involve the following. SF 773 would:

- Expand eligibility to include offenders sentenced for possession, sale, and manufacture of drugs.
- Make no changes to eligibility for those who exhibit behavioral or disciplinary problems.
- Reduce the required incarceration time from 36 to 18 months, or one-half of the prison term, whichever is less.

- Allow those who have not been convicted or adjudicated delinquent of a violent crime in the last 5 years to participate (decreased from 10 years).

SF 1382 and HF 2107 would:

- Make no changes to the Conditional Release Program.

Conditional release saves prison bed space and reduces incarceration costs.²⁴⁶

Deferred Prosecution

Deferred prosecution is granted in cases where “a prosecutor requests that the court set aside a case for a specified period, with an agreement that it will be dismissed if the defendant is not rearrested and, sometimes, meets some other condition that will not be supervised by the court. The defendant agrees to give up the right to have the matter resolved speedily and is not required to enter any plea; there is, therefore, no admission of guilt.”²⁴⁷ Upon successful completion of the agreed-upon conditions, the case is dismissed and the defendant does not have a record of conviction. If the defendant fails to meet the conditions, violates other probation requirements, or is re-arrested, they must serve the full sentence as required by the guidelines.

Under current Minnesota law, judges may, but are not required, to defer prosecution of eligible low-level, first-time drug offenders. In order to qualify as a first-time offender, one cannot have previously participated in a court-ordered diversion program or been granted a prior deferred prosecution.

Just 14% of referrals are made under formal adjudication, which would allow the charges to be removed from the individual’s record upon successful completion of treatment. It is relatively rare to receive a referral to a drug treatment program as part of a formal diversionary program, as only 2.6% receive this.²⁴⁸

SF 773 would:

- Make deferred prosecution mandatory for low-level, first-time offenders.

SF 1382 and HF 2107 would:

- Expand eligibility for deferred prosecution to those who have previously been granted deferred prosecution.

Reinvestment-Funding for Treatment Services

The legislation includes mechanisms for reinvestment of the prison bed savings associated with the proposed reforms. SF 773 would reinvest savings in substance abuse and mental health treatment programs, offender educational programs, and crime victim services. The DOC would have discretion to determine the amount allocated to each of the areas.

SF 1382 and HF 2107 would require that prison bed savings be appropriated to a new Community Justice Reinvestment Account. Half of the allocated funds must be spent on inmate treatment programs, probation and supervised release enhancement, and re-entry programs. The other half of savings must be used to fund grants for chemical dependency and mental health treatment programs, recidivism reduction programs, and drug courts.

People who are addicted to or dependent on marijuana or methamphetamine are more likely to be admitted to a drug treatment center through referral from the criminal justice system than through self-referral. Of the referrals made through the criminal justice system, 34% are made by a probation or parole officer, 14% are made by a criminal court, and 11% are made by a drug or DWI court.²⁴⁹ 52% of treatment admissions for marijuana and 47% for methamphetamine are made through a referral from the criminal justice system.²⁵⁰ Comparatively, fewer than 16% of treatment admissions for heroin are made through the criminal justice system.²⁵¹

Several professionals we spoke with who work in the legal system, probation, and treatment services talked about the success and benefits drug courts have on reducing recidivism and providing wrap-around addiction support services for individuals who qualify for drug court. Violent drug offenders, high-level offenders, and those with prior convictions are typically ineligible for drug court. We know that African Americans are more likely than White Americans to have higher average offense severities, higher criminal history scores, to have used or possessed a dangerous weapon, or to have been convicted of a violent crime. Therefore, they are more likely to be excluded from drug courts and prison-based group treatment services, thus experiencing deeper entrenchment in the criminal justice system.

APPENDIX F
AGGRAVATING AND MITIGATING OFFENSE CHARACTERISTICS

USSG §2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

2D1.1.b Specific Offense Characteristics

- (1) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.
- (2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by 2 levels.
- (3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which
 - (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance,
 - (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or
 - (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.
- (4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by 2 levels.
- (5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by 2 levels.
- (6) If the defendant is convicted under 21 U.S.C. § 865, increase by 2 levels.
- (7) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by 2 levels.
- (8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by 2 levels.
- (9) If the defendant distributed an anabolic steroid to an athlete, increase by 2 levels.

(10) If the defendant was convicted under 21 U.S.C. § 841(g)(1)(A), increase by 2 levels.

(11) If the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense, increase by 2 levels.

(12) If the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, increase by 2 levels.

(13) (Apply the greatest): (A) If the offense involved (i) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (ii) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels. (B) If the defendant was convicted under 21 U.S.C. § 860a of distributing, or possessing with intent to distribute, amphetamine or methamphetamine on premises where a minor is present or resides, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14. (C) If— (i) the defendant was convicted under 21 U.S.C. § 860a of manufacturing, or possessing with intent to manufacture, amphetamine or methamphetamine on premises where a minor is present or resides; or (ii) the offense involved the manufacture of amphetamine or methamphetamine and the offense created a substantial risk of harm to (I) human life other than a life described in subdivision (D); or (II) the environment, increase by 3 levels. If the resulting offense level is less than level 27, increase to level 27. (D) If the offense (i) involved the manufacture of amphetamine or methamphetamine; and (ii) created a substantial risk of harm to the life of a minor or an incompetent, increase by 6 levels. If the resulting offense level is less than level 30, increase to level 30.

(14) If (A) the offense involved the cultivation of marijuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by 2 levels.

(15) If the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved 1 or more of the following factors:

(A) (i) the defendant used fear, impulse, friendship, affection, or some combination thereof to involve another individual in the illegal purchase, sale, transport, or storage of controlled substances, (ii) the individual received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and (iii) the individual had minimal knowledge of the scope and structure of the enterprise;

(B) the defendant, knowing that an individual was (i) less than 18 years of age, (ii) 65 or more years of age, (iii) pregnant, or (iv) unusually vulnerable due to physical or mental condition or otherwise particularly susceptible to the criminal conduct, distributed a controlled substance to that individual or involved that individual in the offense;

(C) the defendant was directly involved in the importation of a controlled substance;

(D) the defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense;

(E) the defendant committed the offense as part of a pattern of criminal conduct engaged in as a livelihood, increase by 2 levels.

(16) If the defendant receives the 4-level (“minimal participant”) reduction in §3B1.2(a) and the offense involved all of the following factors:

(A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and

(C) the defendant had minimal knowledge of the scope and structure of the enterprise, decrease by 2 levels.

(17) If the defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.

USSG §3B1.2. Mitigating Role Based on the defendant’s role in the offense, decrease the offense level as follows:

(a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels. (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels. In cases falling between (a) and (b), decrease by 3 levels. Commentary Application Notes: 1. Definition.—For purposes of this guideline, “participant” has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role). 2. Requirement of Multiple Participants.—This guideline is not applicable unless more than one participant was involved in the offense. See the Introductory Commentary to this Part (Role in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment. 3. Applicability of Adjustment.— (A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. A defendant who is accountable under §1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in concerted criminal activity is not precluded from consideration for an adjustment under this guideline. For example, a defendant who is convicted of a drug trafficking offense, whose role in that offense was limited to transporting or storing drugs and who is accountable under §1B1.3 only for the quantity of drugs the defendant personally transported or stored is not precluded from consideration for an adjustment under this guideline. Likewise, a defendant who is accountable under §1B1.3 for a loss amount under §2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant’s personal gain from a fraud offense and who had limited knowledge of the scope of the

scheme is not precluded from consideration for an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose role in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, is not precluded from consideration for an adjustment under this guideline. (B) Conviction of Significantly Less Serious Offense.—If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 12 under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under §2D2.1 (Unlawful Possession; Attempt or Conspiracy)), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine. (C) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, is based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case. 4. Minimal Participant.—Subsection (a) applies to a defendant described in Application Note 3(A) who plays a minimal role in concerted activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant. 5. Minor Participant.— Subsection (b) applies to a defendant described in Application Note 3(A) who is less culpable than most other participants, but whose role could not be described as minimal.

School Zones

Subd. 12a.Park zone. "Park zone" means an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within 300 feet or one city block, whichever distance is greater, of the park boundary.

Subd. 14a.School zone. "School zone" means: (1) any property owned, leased, or controlled by a school district or an organization operating a nonpublic school, as defined in section [123B.41, subdivision 9](#), where an elementary, middle, secondary school, secondary vocational center or other school providing educational services in grade one through grade 12 is located, or used for educational purposes, or where extracurricular or cocurricular activities are regularly provided; (2) the area surrounding school property as described in clause (1) to a distance of 300 feet or one city block, whichever distance is greater, beyond the school property; and (3) the area within a school bus when that bus is being used to transport one or more elementary or secondary school students.

Subd. 19. Public housing zone. "Public housing zone" means any public housing project or development administered by a local housing agency, plus the area within 300 feet of the property's boundary, or one city block, whichever distance is greater.

Subd. 22. Drug treatment facility. "Drug treatment facility" means any facility in which a residential rehabilitation program licensed under Minnesota Rules, parts [9530.6405](#) to [9530.6590](#), is located, and includes any property owned, leased, or controlled by the facility.

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