

# Current Legislative Proposals

Introduced During the 89<sup>th</sup> Minnesota Legislature (2015-16)

Minnesota Sentencing Guidelines Commission  
September 23, 2015

## 89<sup>th</sup> Legislature's Drug Bills

### Senate File 773

- House companion: H.F. 994
- No committee hearings yet



### Senate File 1382

- No committee hearings yet



### House File 2107

- Similar to S.F. 1382
- No committee hearings yet



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## House File 2107

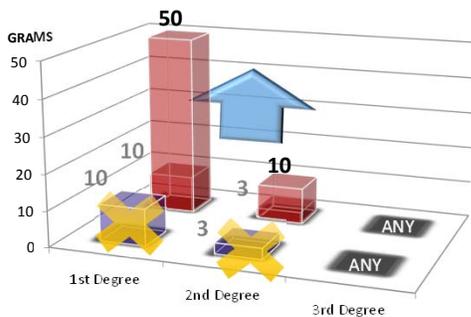
- Similar to S.F. 1382
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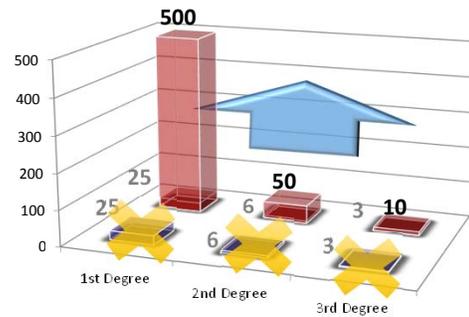
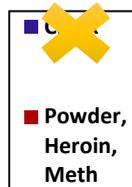
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## SF 773, POLICY 1— *Russell* Rollback

- Restores thresholds for cocaine, methamphetamine, and heroin to *Russell*-era (1991) levels. (No crack cocaine threshold; *see Russell*.)



SALE OFFENSES



POSSESSION OFFENSES

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SF 773, POLICY 2—

## 2<sup>nd</sup> Degree Meth Manufacture Creation

- Repeals 1<sup>st</sup> Degree Controlled Substance Crime – Manufacture Any Amount of Methamphetamine
  - Because “sale” includes “manufacture,” 1<sup>st</sup> Degree will still apply to manufacturing 50 g of meth
- Amends 2<sup>nd</sup> Degree Controlled Substance Crime to include manufacturing less than 50 g of meth

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SF 773, POLICY 3—

## Mandatory Minimum Repeal

- Drops mandatory minimums for subsequent controlled substance convictions. Currently—
  - 1<sup>st</sup> Degree is 4 years
  - 2<sup>nd</sup> Degree is 3 years
  - 3<sup>rd</sup> Degree is 2 years
  - 4<sup>th</sup> Degree is 1 year
  - 5<sup>th</sup> Degree is 6 months

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SF 773, POLICY 4—

## Deferred Prosecution Requirement

- Minn. Stat. § 152.18 permits one-time deferred prosecution, with eventual dismissal, for certain low-level drug offenders
- SF 773 would **require** (rather than permit) such deferred prosecution
- Eligibility requirements remain unchanged:
  - Applies to possession, not sale
  - 4<sup>th</sup> & 5<sup>th</sup> Degree only
  - No prior drug convictions allowed
  - No prior dispositions under § 152.18 allowed

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SF 773, POLICY 5—

## Early Conditional Release Expansion

- Minn. Stat. § 244.0513 permits DOC to grant early conditional release to drug possessors and meth manufacturers who—
  - Complete half their sentence (or 36 months) and
  - Have completed treatment in prison
  - Weren't convicted of a violent crime within 10 years
- SF 773 would expand this authority to—
  - Cover drug sellers and other drug felons, not just possessors/meth manufacturers
  - Kick in no later than 18 months into the sentence, rather than 36 months
  - Cover those who weren't convicted of a violent crime within 5 years

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SF 773, POLICY 6—

## Reinvestment

- Each biennium, the Governor must add the savings realized as a result of SF 773 to DOC budget
- If appropriated, DOC must use the money, either directly or through grants or interagency transfers, for—
  - Substance abuse and mental health treatment programs
  - Offender educational programs
  - Crime victim services

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## SF 773 Est. Long-Term Prison Bed Savings

Threshold Changes By Offense	# of Cases Shift Severity	# Cases Shift to Probation	Prison Beds Saved	# Cases Shorter Sentences	Prison Beds Saved	Total Prison Bed Savings
1 <sup>st</sup> Degree Sale/Poss.	158	0	0	61	92	92
1 <sup>st</sup> Degree Meth Mfg.	21	0	0	13	16	16
2 <sup>nd</sup> Degree	251	87	236	74	124	360
3 <sup>rd</sup> Degree Poss.	185	49	99	18	24	123
3 <sup>rd</sup> Degree no mandatory	0	22	33	0	0	33
Mandatory 152.18	0	126	103	0	0	103
<b>Totals</b>	<b>615</b>	<b>284</b>	<b>471</b>	<b>166</b>	<b>256</b>	<b>727</b>

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## SF 1382/HF 2107, POLICY 1— Threshold Modifications

- Cocaine and meth thresholds get heavier—
  - Unless an “aggravating factor” applies (see inset)
- Heroin thresholds stay the same
- Thresholds generally get lighter for—
  - Other narcotics (e.g., opiates), and
  - Marijuana

“Aggravating Factors” —

- Defendant/accomplice had firearm/dangerous wpn.
- Defendant has prior crime of violence conviction (drugs don't count)
- Defendant acted for the benefit of a gang
- Offense involved separate acts in 3+ counties
- Offense involved importing drugs into Minnesota
- Offense involved 3+ separate sale transactions
- Offense's circumstances show defendant had a high position in the drug distribution hierarchy
- Defendant misused position or status (e.g., fiduciary)
- Offense involved sale to minor/vulnerable adult
- Offense happened in school, park, or public housing zone; or correctional/drug treatment facility
- Equipment, paraphernalia, documents, or monies evidence involvement of significant larger drug quantities than the minimum threshold amount (HF 2107 only)

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## Threshold changes for 1<sup>st</sup> Degree

Crime	Current law	SF 773 ( <i>Russell era</i> )	SF 1382/HF 2107: Weight only	SF 1382/HF 2107: Weight + agg. factor
Sell cocaine/meth	10 g	50 g	35 g (SF 1382) 25 g (HF 2107)	10 g
Sell heroin	10 g	50 g	10 g	--
Sell other narcotic	50 g	50 g	35 g (SF 1382) 25 g (HF 2107)	10 g
Sell marijuana	50 kg	50 kg	25 kg	10 kg
Possess cocaine/meth	25 g	500 g	50 g	25 g
Possess heroin	25 g	500 g	25 g	--
Possess other narcotic	500 g	500 g	50 g	25 g
Possess marijuana	100 kg	100 kg	50 kg/500 plants	25 kg/100 plants

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## Threshold changes for 2<sup>nd</sup> Degree

Crime	Current law	SF 773 ( <i>Russell era</i> )	SF 1382/HF 2107: Weight only	SF 1382/HF 2107: Weight + agg. factor
Sell cocaine/meth	3 g	10 g	10 g	3 g
Sell heroin	3 g	10 g	3 g	--
Sell other narcotic	10 g	10 g	10 g	3 g
Sell marijuana	25 kg	25 kg	10 kg	5 kg
Possess cocaine/meth	6 g	50 g	25 g	6 g
Possess heroin	6 g	50 g	6 g	--
Possess other narcotic	50 g	50 g	25 g	6 g
Possess marijuana	50 kg	50 kg	25 kg/100 plants	10 kg/50 plants

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## Threshold changes for 3<sup>rd</sup> Degree

Crime	Current law	SF 773 ( <i>Russell era</i> )	SF 1382/HF 2107
Possess cocaine, meth, or heroin	3 g/50 dosage units	10 g/50 dosage units	3 g/50 dosage units
Possess other narcotic	10 g/50 dosage units	10 g/50 dosage units	3 g/50 dosage units
Possess marijuana	10 kg	10 kg	10 kg/50 plants

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SF 1382/HF 2107, POLICY 2—

## Mandatory Minimum Repeal

- Drops existing mandatory minimums for subsequent controlled substance convictions
- For 1<sup>st</sup> and 2<sup>nd</sup> Degree, these are replaced with new Aggravated 1<sup>st</sup> and 2<sup>nd</sup> Degree offenses (see next slide)
- For 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Degree, the mandatory minimums are eliminated entirely
  - Only the longer statutory maximums are retained,
  - And then, only when the prior conviction was for a 1<sup>st</sup> or 2<sup>nd</sup> Degree

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SF 1382/HF 2107, POLICY 3—

## Creation of Aggravated 1<sup>st</sup> and 2<sup>nd</sup> Degree

- Must meet the elements of 1<sup>st</sup> or 2<sup>nd</sup> Degree offense, plus:
  - Prior 1<sup>st</sup> or 2<sup>nd</sup> Degree, and within 10 years of discharge from sentence; or
  - While selling/possessing marijuana or a narcotic drug other than heroin, have two aggravating factors (may reuse the aggravating factor that enhanced crime to 1<sup>st</sup> or 2<sup>nd</sup> Degree); or
  - [1<sup>st</sup> Degree only:] The person possessed/sold more than 100 g/500 dosage units of controlled substances other than marijuana; or
  - [1<sup>st</sup> Degree only:] The person possessed/sold more than 100 kg/1,000 plants of marijuana
- Consequence:
  - Must be sentenced to prison for Guidelines duration
  - Hard mandatory, no waiver or departure

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SF 1382/HF 2107, POLICY 4—

## “Major Controlled Substance Offense” Redefined

- Under current law, an aggravated sentencing departure is justified for a “major controlled substance offense”
- Two or more listed circumstances are required
- The list is changed to conform to the list of “aggravating factors” discussed above

### “Aggravating Factors”—

- Defendant/accomplice had firearm/dangerous wpn.
- Defendant has prior crime of violence conviction (drugs don't count)
- Defendant acted for the benefit of a gang
- Offense involved separate acts in 3+ counties
- Offense involved importing drugs into Minnesota
- Offense involved 3+ separate sale transactions
- Offense's circumstances show defendant had a high position in the drug distribution hierarchy
- Defendant misused position or status (e.g., fiduciary)
- Offense involved sale to minor/vulnerable adult
- Offense happened in school, park, or public housing zone; or correctional/drug treatment facility
- Equipment, paraphernalia, documents, or monies evidence involvement of significant larger drug quantities than the minimum threshold amount (HF 2107 only)

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SF 1382/HF 2107, POLICY 5—

## Reinvestment

- Each biennium, MMB adds the savings realized from this bill to the governor’s proposed budget for the DOC
- If appropriated, DOC deposits the money into a new Community Justice Reinvestment Account
- DOC spends up to half the money on the following drug-related activities: inmate treatment programs, probation and supervised release enhancement, and reentry programs
- DOC pays the rest to Office of Justice Programs to fund grants for chemical dependency and mental health treatment programs, recidivism reduction programs, and drug courts

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HF 2107, POLICY 6—

## Hardening Mandatory Minimum for Weapons

- Minn. Stat. § 609.11 has these mandatory minimums for doing the following while committing, *inter alia*, a felony drug offense:
  - Using a dangerous weapon—a year and a day in prison
  - Using/possessing a firearm—three years in prison
- Except for repeat offenders, these mandatory minimums may be waived if the sentencing court finds substantial & compelling reasons to do so (Sentencing Guidelines departure)
- HF 2107 (but not SF 1382) eliminates this waiver authority in drug cases; § 609.11 then becomes a “hard” mandatory minimum

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## SF 1382 Est. Long-Term Prison Bed Savings

Change	# of Cases Shift Severity or Prison	# Cases Shift to Probation	Prison Beds Saved	# Cases Sentences Differ	Prison Bed Saved	Total Prison Bed Savings
1st Degree threshold	82 severity			23 (shorter)	35	35
2nd Degree threshold	135 severity	40	105	25 (shorter)	39	144
3rd Degree no mandatory		38	53			53
1st Degree mandatory	23 to prison		-117	-24 (longer)	-40	-157
2nd Degree mandatory	1 to prison		-5	-10 (longer)	-8	-13
<b>Totals</b>	<b>24 to prison</b>	<b>78</b>	<b>36</b>		<b>26</b>	<b>62</b>

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## HF 2107 Est. Long-Term Prison Bed Savings

Change	# of Cases Shift Severity or Prison	# Cases Shift to Probation	Prison Beds Saved	# Cases Sentences Differ	Prison Bed Saved	Total Prison Bed Savings
1st Degree threshold	70 severity			22 (shorter)	31	31
2nd Degree threshold	135 severity	40	105	25 (shorter)	39	144
3rd Degree no mandatory		38	53			53
1st Degree mandatory	25 to prison		-125	-24 (longer)	-42	-167
2nd Degree mandatory	3 to prison		-8	-9 (longer)	-8	-16
3 <sup>rd</sup> Degree wpn. mand.	2 to prison		-4			-4
5 <sup>th</sup> Degree wpn. mand.	10 to prison		-16			-16
<b>Totals</b>	<b>40 to prison</b>	<b>78</b>	<b>5</b>	<b>14</b>	<b>20</b>	<b>25</b>

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## Mandatory Minimums & Drug Court

- Currently, 1<sup>st</sup>-4<sup>th</sup> Degree mandatory minimums for subsequent controlled substance convictions are truly mandatory, even if amenable to probation/drug court
- “There are some people that are 1st and 2nd Degree offenders that may have a prior drug conviction on their records that are nonviolent, that we believe should be in a program like this. Right now they do face mandatory minimum prison sentences and **we’re not allowed to put them in a program like this**, and I think that’s something that we should address. I’m not saying we should get rid of mandatory minimums. Mandatory minimums are important in many respects. I’m not going to debate those here today because I’m sure we’ll have opportunity to discuss those later, but for certain offenders—nonviolent offenders, again, that can obtain success like the individuals you’ve just heard from—I think we should have the opportunity to make that happen.”  
—**Dakota County Attorney James Backstrom**, before Minn. House Judiciary Cmte., 9/16/14, regarding Dakota County Drug Court (emphasis added).

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## Side-by-Side Comparison

Policy	SF 773	SF 1382/HF 2107
<b>Thresholds</b>	Cocaine, meth, and heroin increase to <i>Russell</i> -era	<ul style="list-style-type: none"> <li>• Some increase in cocaine &amp; meth               <ul style="list-style-type: none"> <li>• Except when aggravated; then, no change</li> </ul> </li> <li>• No change in heroin</li> <li>• Reduction for marijuana and opiates</li> </ul>
<b>Meth manufacture</b>	Lower-level manufacture created at 2 <sup>nd</sup> degree	(No change)
<b>Mandatory minimums</b>	Repealed	<ul style="list-style-type: none"> <li>• Repealed for 3<sup>rd</sup>-5<sup>th</sup> Degree</li> <li>• Priors: Must also be 1<sup>st</sup> &amp; 2<sup>nd</sup> Degree</li> <li>• Or: Aggravating offense circumstances/amounts</li> <li>• Duration lengthened to grid time</li> </ul>
<b>Deferred prosecution</b>	Mandatory for all those eligible	(No change)
<b>Early release</b>	Eligibility expanded	(No change)
<b>Reinvestment</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
<b>Weapon mandatory</b>	(No change)	HF 2107: Drugs + weapons = always go to prison

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