

Minnesota drug laws: Are they too harsh?

Momentum gathers for review of sentencing rules

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Minnesota's drug laws might be too harsh and the state should consider reducing prison terms for users and small-time dealers, a powerful sentencing commission contends.

The provocative stance from the Minnesota Sentencing Guidelines Commission would have been improbable a decade ago, when politicians and prosecutors often spoke about zero tolerance and a "war on drugs."

But the idea of reforming drug laws, including the possibility of reducing recommended sentences for certain offenses, has been gaining traction among lawmakers, judges and prosecutors.

The sentencing commission put forward a proposal that would cut recommended sentences on some drug offenses nearly in half. First-degree offenders convicted for the first time could see recommended sentences reduced from seven years to four years.

A bill that passed the state Senate last month includes a provision ordering a drug-sentencing study. The review would be done next year and could include new sentencing guidelines that would automatically take effect unless lawmakers act to block them.

Backers of a review said the state must examine whether the lengthy prison terms for drug offenses recommended under current sentencing guidelines are fair, effective and worth the cost. Drug offenders represent an increasing percentage of the state's prison population.

"We've got too many drug folks in prison," said Hennepin County Attorney Mike Freeman. "We need to do something about it. We need to have an enlightened dialogue that includes treatment."

Dakota County Attorney James Backstrom said he would oppose lighter sentences. He said violent crime and other problems stemming from drug use and dealing can "overwhelm communities."

"Lengthy prison sentences for our most serious drug offenders is reflective of the seriousness of the problem and is necessary to assure that violent drug offenders and profiteers are appropriately held accountable," Backstrom said.

Minnesota and other states got tough on drug users and dealers in the late 1980s as part of a national war on drugs. Minnesota targeted crack cocaine first, with lawmakers boosting sentences and making those caught with even small amounts of the drug eligible for the most serious charges.

Isabel Gomez, the sentencing commission's executive director and a former Hennepin County judge, said she witnessed from the bench the problems that prompted the crackdown on drugs. Drug-related murders and "crack babies" shocked lawmakers and the community, she said.

"There were so many experts at the time talking about how pernicious crack was, just like the methamphetamine discussion now," Gomez said. "It wasn't hysterical, because what was happening to real people in our community was appalling."

In 1991, the Minnesota Supreme Court concluded that low thresholds for crack cocaine offenses unfairly

targeted blacks and declared them unconstitutional. In response, lawmakers lowered the threshold for all street drugs.

The state's prison population has been on the rise ever since, with drug offenders helping fuel the increase. In 1990, about 10 percent of inmates were drug offenders. In 2006, nearly a quarter of inmates were serving sentences for drug offenses.

A sentencing commission report completed in January raises questions about the effectiveness and costs of the drug laws. Each prisoner costs the state an average of nearly \$30,000. The state would save about \$2 million in 2008 if the commission's recommended guidelines were in effect, the report states. That figure would grow as drug offenders who receive the new, shorter sentences get released, the report states.

"This is a rational discussion about an area of law that appears ripe for change," Gomez said.

The report points out that prosecutors and judges already are sidestepping guidelines in a majority of drug cases. More than one-third of convicted drug addicts who should get state prison time get lesser jail terms instead and one-third of those who actually go to prison serve less time than recommended, the report shows.

The high number of reduced terms, known as "departures," defeats the purpose of the guidelines, opening up the justice system to sentences that vary by race, geography or other unfair factors, Gomez said.

"The departures may also suggest that Minnesota law does not adequately identify the most serious offenders and fails to distinguish between them and less culpable individuals," the report states.

Minnesota's drug sentences are often as steep as penalties for violent crimes.

"The prison term for a first-degree drug conviction - possession of 1 ounce of cocaine or meth - is seven years. That's also what one would serve for criminal vehicular homicide," said state public defender John Stuart, who supports the law change. "You are talking about a dead person versus someone holding a bag of white power, and not a very big bag."

Stiff penalties have been getting more attention as drug crimes shift from cocaine in big cities to methamphetamine in suburban and rural areas. That shift has given the drug war a broader reach, Gomez said.

Before meth, many Minnesotans "didn't know anyone's kids being sent to prison," Gomez said.

"Methamphetamine makes it easier for people to be thoughtful," she said. "It's impacted so many white, middle-class, working-class people."

Freeman said that the state should consider sentencing rules that help distinguish addicts from hard-core dealers but that prosecutors must continue to be "tireless" when going after sellers with guns.

Ramsey County Attorney Susan Gaertner expressed similar sentiments.

"I don't want to lower first- and second-degree drug sentences," she said. "They could be changed to be more targeted at dealers and other drug offenders who do pose a significant public safety risk."

Gaertner said she's concerned that drug offenders represent a quarter of the prison population, but she said policymakers need to keep in mind the big picture.

"The irony of this discussion about how we're too tough on these cases compared to others is that we have one of the lowest incarceration rates in the country," Gaertner said. "We shouldn't be part of a downward trend in sentencing when we are already at the bottom."

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