Summary of Drug Sentencing Reform Proposal

1. The legislation minimizes the impact of changes to the Minnesota Sentencing Guidelines (MSG) that would have significantly reduced the presumptive fixed sentences for persons convicted of first and second degree drug crimes. These changes were scheduled to go into effect on August 1, 2016. While the changes to the Guidelines will still go into effect on August 1, 2016, the impact the changes will have on first and second degree is minimized by the following provisions:

- The (MSG) “Drug Offender Grid” will be amended in a manner that ranks first degree sale and possession at same severity level. As a result, the presumptive fixed prison sentence for first degree possession is increased by 17 months.
- The (MSG) “Drug Offender Grid” will be amended in a manner that maintains the presumptive fixed prison sentences for second degree drug offenses. As a result, the presumptive fixed prison sentences will increase 12-36 months depending upon the offender’s criminal history.
- The (MSG) “Drug Offender Grid” will be amended in a manner that creates a presumptive prison sentence for second degree drug offenders with a criminal history of two or more (the proposed MSG Drug Offender Grid creates requires the offender to have a criminal history of 3 or more before a presumptive prison sentence exists).
- The creation of an “aggravated first degree controlled substance crime” for cases involving the sale or possession of 100 grams or 500 dosage units of a controlled substance. This new offense will carry a mandatory minimum sentence of 65 month sentence for a first time offender. The mandatory minimum may be not be waived for sale cases, but may be waived for possession cases provided the offender does not have a prior first, second or third degree drug conviction.

If the offender or an accomplice possessed on their person or within immediate reach, or used, brandished, displayed, threatened, or otherwise employed a firearm, or two or more of the following aggravating factors exist the mandatory minimum is increased to 86 months and may not be waived under any circumstances. The aggravating factors are:

(1) the defendant, within the previous ten years, has been convicted of a crime of violence as defined in section 609.1095, subdivision 1, paragraph (d), other than a violation of a provision under chapter 152, including an attempt or conspiracy, or was convicted of a similar offense in the United States or another state;

(2) The offense was committed for the benefit of a gang as defined in section 609.229;

(3) The offense involved separate acts of sale or possession of a controlled substance in three or more counties;
4. The offense involved the transfer of controlled substances across a state or international border and into Minnesota;

5. The offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to sell or transfer;

6. The circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

7. The defendant used a position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships;

8. The offense involved the sale of a controlled substance to a minor or vulnerable adult;

9. The defendant or an accomplice manufactured, possessed, or sold a controlled substance in a school zone, park zone, correctional facility, or drug treatment facility; or

10. The defendant or an accomplice possessed equipment, drug paraphernalia, documents, or money evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than the minimum threshold amount for the underlying offense.

2. The proposed legislation will change drug thresholds as follows:

   - **1st degree narcotic sale** threshold is increased from 10 to 17 grams. Heroin threshold would remain at 10 grams. However, if the offender possessed a firearm or two or more of the above aggravating factors are present the thresholds for sale remains at 10 grams.
   - **1st degree narcotic possession** threshold is increased from 25 to 50 grams. Heroin threshold would remain at 25 grams. However, if the offender possessed a firearm or two or more of the above aggravating factors are present the thresholds for possession remains at 25 grams.
   - **1st degree marijuana crime** thresholds are reduced from 50 to 25 kilograms for sale and from 100 to 50 kilograms for possession.
   - **2nd degree narcotics** thresholds are increased from 3 to 10 grams for sale and from 6 to 25 grams for possession. Heroin thresholds would remain at 3 grams sale and 6 grams possession. However, if the offender possessed a firearm or three or more of the above aggravating factors are present the threshold for sale remains at 3 grams and the threshold for possession is reduced to 10 grams.
   - **2nd degree marijuana crime** thresholds are reduced from 25 to 10 kilograms for sale and from 50 to 25 kilograms for possession.
   - **3rd degree controlled substance crime possession** threshold is increased from 3 to 10 grams for all drugs other than heroin. No threshold change for sale cases. Heroin threshold would remain at 3 grams.
3. The legislation creates a non-waivable 36 month mandatory minimum for the possession of firearm for first and second degree sale cases. Possession of a firearm is defined as “the person or an accomplice possessed on their person or within immediate reach, or used, whether brandishing, displaying, threatening with, or otherwise employing a firearm”

4. The legislation creates additional 1st and 2nd degree controlled substance crime to address marijuana grow operations based on number of plants instead of weight. The thresholds are as follows: first degree = 500 or more plants, second degree = 100 or more plants.

5. The legislation eliminates mandatory minimum sentences based on prior 3rd, 4th, and 5th degree drug convictions. Prior 1st and 2nd degree convictions within 10 years would still trigger the mandatory minimum for a subsequent conviction of a 1st and 2nd degree drug crime of 48 months for a 1st degree conviction and 36 months for a 2nd degree conviction (which is the same as in current law).

6. Under the legislation all first time 5th degree controlled substance crimes involving possession of a very small of controlled substances will be classified as a gross misdemeanor rather than a felony. A second or subsequent 5th degree controlled substance possession crime would be a felony. This provision would apply to possession or sale of less than .25 grams of any controlled substance other than heroin; less than .05 gram for heroin; and 1 dosage unit or less of any controlled substance possessed or sold by dosage units rather than grams (e.g., LSD, Ecstasy, prescription pills, etc.).

7. The legislation requires the court to impose a stay of adjudication for all first time fifth degree possession cases and gives the court discretion to impose a stay of adjudication for first time third and fourth degree possession cases.

8. The legislation creates a misdemeanor offense for a third or subsequent possession of paraphernalia offense. Currently the offense is a petty misdemeanor.

9. The legislation allows persons who have been convicted and sentenced to a mandatory minimum prison sentence that will be eliminated under this act to become eligible to participate in the Challenge Incarceration Programs. It allows 3rd and 4th degree offenders to participate in the Conditional Release for treatment program. This does not apply to those convicted of an aggravated first degree offense.

10. The legislation establishes a “Community Justice Reinvestment Account” to allow potential savings that may result from the legislative changes to be reinvested into the drug court and other community based programs associated with chemical dependency.