

HMONG AMERICAN BAR ASSOCIATION

MINNESOTA ASIAN PACIFIC AMERICAN BAR ASSOCIATION

MINNESOTA ASSOCIATION OF BLACK LAWYERS

MINNESOTA HISPANIC BAR ASSOCIATION

MINNESOTA LAVENDER BAR ASSOCIATION

SOMALI AMERICAN BAR ASSOCIATION

VIA ELECTRONIC MAIL ONLY
(sentencing.guidelines@state.mn.us)

December 20, 2016

MN Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
Saint Paul, MN 55155

**Re: Proposed modifications to the Minnesota Sentencing Guidelines and
Commentary resulting from legislative and non-legislative amendments**

Dear Commission Members:

We, the undersigned bar associations, representing hundreds of attorneys in the State of Minnesota, submit the following comments for your consideration as you deliberate on proposed changes to the Minnesota Sentencing Guidelines and Commentary resulting from legislative and non-legislative amendments in 2016.

Minnesota has some of the harshest drug sentencing laws, fastest growing prison population, and worst racial disparities in the country when it comes to penalties for drug offenses.

It is our sincere view that drug sentencing reform enacted this year with bipartisan support and the support of law enforcement, prosecutors, and defenders is under attack with the sentencing proposals you are considering this week. The changes would mean more people who are addicted to drugs serving longer prison sentences and would result in even worse racial disparities in our criminal justice system. We believe that

drug addiction should be addressed as a public health concern, rather than a criminal issue.

We, as leaders of bar associations representing people of color, minorities, and the disabled in the State of Minnesota cannot stand idly by as these proposed changes are discussed and possibly enacted.

When judges sentence someone in Minnesota they use criminal history scores to determine their sentence – the higher the score the longer the sentence, or in some cases the presumption that it will be a prison sentence rather than probation sentence. The statutes do not say how criminal history for these offenses should be calculated, that is up to you, the Minnesota Sentencing Guidelines Commission.

In light of the sweeping legislative amendments enacted this year and signed into law by Governor Mark Dayton, a person's criminal history score for a past drug offense should now be calculated using the new statutes, rather than the statutes that were in effect at the time of the offense.

This was the very purpose of enacting reforms. Our communities, comprised of minorities disproportionately represented in prison, are looking to you to carry out the legislature's intent and to help carry the mantle of criminal justice reform.

When drug sentences were greatly increased in the 1990s, then-new, harsher sentences were used for calculating criminal history. Using the same scheme today, but using our new Minnesota sentencing laws enacted in 2016, a person should receive the benefit of the law change and therefore potentially receive a shorter sentence or even probation instead of prison.

Some advocates now object to using this manner of interpretation and have now asked to have the old, harsher statutes applied to past drug offenses for calculating criminal history. We disagree with the approach insofar as it does not align with the intent of the legislature when it passed its reforms aimed at this very problem this year.


Not allowing the new drug sentencing statutes to be used in calculating a criminal history score goes against the intent of the legislature and the community to provide more effective options for treatment rather than sending these individuals to prison.

Enclosed please find a copy of a joint resolution co-signed last December in support of this topic by four of the undersigned bar associations. The resolution was authored in support of the legislative changes ultimately enacted in 2016.


We thank you for your service on the Commission and your consideration of our views at this next phase of these reforms.

Respectfully,

Hmong American Bar Association

By: 
Chong Lo
President

**Minnesota Asian Pacific American
Bar Association**

By: 
Benjamin Kwan
President

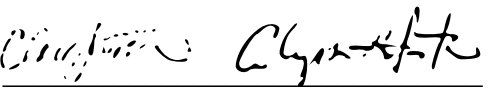
Minnesota Association of Black Lawyers

By: 
Michael Essien
President

Minnesota Hispanic Bar Association

By: 
Bryan Browning
President

Minnesota Lavender Bar Association

By: 
Claire Joseph & Alyssa Smith
Co-Chairs

Somali American Bar Association

By: 
Amran Farah
President

Enclosure



MINNESOTA ASIAN PACIFIC
AMERICAN BAR ASSOCIATION

December 29, 2015

VIA EMAIL: sentencing.guidelines@state.mn.us

Minnesota Sentencing Guidelines Commission
309 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

RE: Written Comments to the Proposed Amendments to the Minnesota Sentencing Guidelines and Commentary

Dear Commission:

On behalf of the Minnesota Asian Pacific American Bar Association, Minnesota Association of Black Lawyers, Minnesota Hispanic Bar Association, and Minnesota Lavender Bar Association, I submit a Joint Resolution in Support of the Proposed Drug Sentencing Amendments to the Minnesota Sentencing Guidelines ("Joint Resolution"). The Executive Boards and Board of Directors of each of the bar associations approved the Joint Resolution, which is submitted as written comment to the proposed amendments to the Minnesota Sentencing Guidelines and Commentary.

Should you have any questions, you may reach me at 952-697-2634 or gschwartz@billionarmitage.com. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Schwartz", enclosed in a thin blue rectangular border.

Greg Schwartz
President



AFFINITY BARS' RESOLUTION IN SUPPORT OF THE PROPOSED DRUG SENTENCING AMENDMENTS TO THE MINNESOTA SENTENCING GUIDELINES

WHEREAS, Minnesota correctional facilities continue to experience significant increases in drug offenders and are at their capacities;

WHEREAS, the current Minnesota Sentencing Guidelines (hereinafter "current sentencing guidelines") contribute to increased income inequality and more concentrated poverty, with long-term economic impacts;

WHEREAS, the current sentencing guidelines for drug offenses disparately and disproportionately affect people of color;

WHEREAS, in 2014, people of color accounted for approximately fifty-eight (58) percent of all drug offenders in the Twin Cities Metropolitan area and approximately thirty-four (34) percent of drug offenders in the State of Minnesota;

WHEREAS, according to the latest Minnesota Census, only approximately nineteen (19) percent of the residents of Minnesota are people of color, including Blacks, American Indians, Hispanics, and Asians;

WHEREAS, under the current sentencing guidelines, "presumptive commit sentences" for a large number of drug-related offenses fuels prison growth, drains state resources, and leads to high rates of recidivism;

WHEREAS, the current sentencing guidelines do not meaningfully differentiate between those convicted of drug sale and those convicted of drug possession;

WHEREAS, under the current sentencing guidelines, the lack of uniformity in sentencing persists in drug and drug-related offenses, and the rate of downward departure remains high;

WHEREAS, under the current sentencing guidelines, offenders must make a substantial and compelling showing that they are particularly amendable to probation or treatment to receive downward departures;

WHEREAS, under the current sentencing guidelines, offenders with a prior unsuccessful treatment and/or offenders who have relapsed after periods of sobriety are, in practice, effectively barred from receiving a downward departure for being unable to make a substantial and compelling showing that they are amendable to probation or treatment;

WHEREAS, the proposed amendments, by adding chemical dependency as a mitigating factor, allow courts to consider an offender's *future* amenability to treatment and thus allow courts to better address the root cause of an offender's criminal activity;

WHEREAS, the proposed amendments shift the “presumptive disposition” from a “presumptive prison commitment” to a “presumptive stayed sentence” for a large number of offenders, now and in the future;

WHEREAS, the shift in the “presumptive disposition” will not only reduce the size of the prison population, but will also minimize inconsistent downward departures;

WHEREAS, the proposed amendments recommend prison sentences for first-degree drug sale, depending on criminal history, ranging between 65 and 125 months instead of the current 86 to 158 month are consistent with the actual prison sentences that defendants have received for that crime over the past decade;

WHEREAS, the proposed amendments will result in a savings of 523 prison beds each year starting year 2028 and generate positive fiscal impact;

WHEREAS, the proposed amendments recommend additional aggravating factors allowing prosecutors to seek sentences that more accurately reflect the culpability of drug dealers;

WHEREAS, the proposed amendments allow for fairer and more flexible sentencing in all cases, such as those involving “kingpin” drug distributors on one hand, and chemically dependent defendants in need of treatment on the other;

WHEREAS, the proposed amendments aim to preserve and enhance public safety by providing more tools to prosecute drug dealers;

WHEREAS, the proposed amendments are consistent with the sentencing philosophy that those who commit more severe offenses should receive a penalty as great as, or greater than, the penalty for those who commit less severe offenses;

WHEREAS, the proposed amendments would improve predictability and uniformity in drug sentencing and address the limited capacity of Minnesota’s correctional facilities.

THEREFORE BE IT RESOLVED that the undersigned:

1. Support the proposed amendments to the Minnesota Sentencing Guidelines; and
2. Urge the Minnesota Sentencing Guidelines Commission to formally adopt the proposed non-legislative amendments to Controlled Substance Offenses.

Approved by the Executive Board of Minnesota Asian Pacific American Bar Association on December 29, 2015.

Approved by the Board of Directors of Minnesota Association of Black Lawyers on December 29, 2015.

Approved by the Board of Directors of Minnesota Hispanic Bar Association on December 29, 2015.

Approved by the Board of Directors of Minnesota Lavender Bar Association on December 29, 2015.