




Minnesota's Drug Sentencing Laws
Evolution and Proportionality



John Smith

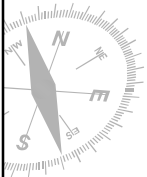


John Smith
► Possesses Powder Cocaine



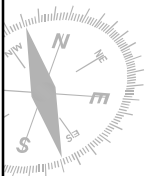
John Smith

- ▶ Possesses Powder Cocaine
- ▶ 1/2 ounce (about 13 grams)



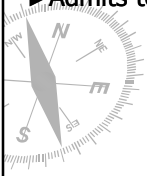
John Smith

- ▶ Possesses Powder Cocaine
- ▶ 1/2 ounce (about 13 grams)
- ▶ Approximately \$1,200 street value



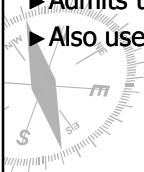
John Smith

- ▶ Possesses Powder Cocaine
- ▶ 1/2 ounce (about 13 grams)
- ▶ Approximately \$1,200 street value
- ▶ Admits to selling cocaine



John Smith

- ▶ Possesses Powder Cocaine
- ▶ ½ ounce (about 13 grams)
- ▶ Approximately \$1,200 street value
- ▶ Admits to selling cocaine
- ▶ Also uses the drug.



John Smith

- ▶ Possesses Powder Cocaine
- ▶ ½ ounce (about 13 grams)
- ▶ Approximately \$1,200 street value
- ▶ Admits to selling cocaine
- ▶ Also uses the drug.
- ▶ No criminal history.

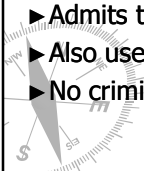
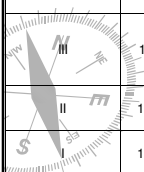


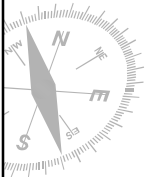
Table 1. 1982 Sentencing Guidelines

Severity Level	Sentence (months)	Offenses
VI	21, stayed	Sale of Heroin, LSD, Other Narcotics, and Hallucinogens
IV	12, 1 day stayed	Sale of Cocaine
III	12, 1 day stayed	Sale of Other Non-narcotics; Possession of LSD, Heroin, Other Narcotics, and Hallucinogens
II	12, 1 day stayed	Sale of Marijuana
I	12, 1 day stayed	Possession of Cocaine, Marijuana, and Non-narcotics



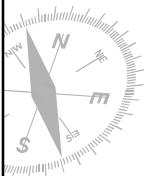
"Major Controlled Substance Offense"

▶ Two or More of the Following Factors:



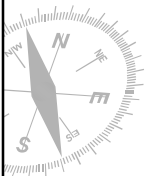
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- ▶ Two or More of the Following Factors:
- Offense involved at least **three separate transactions**; or



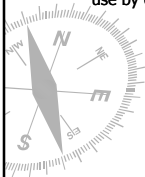
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 - High degree of **sophistication** or planning or occurred over a **lengthy period of time** or involved a **broad geographic area** of disbursement; or


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 - High degree of **sophistication** or planning or occurred over a **lengthy period of time** or involved a **broad geographic area** of disbursement; or
 - Offender used **positions of trust, confidence or fiduciary relationships** (e.g. pharmacist, physician, or other medical professional)

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II	12, 1 day stayed	Sale of Marijuana
I	12, 1 day stayed	Possession of Cocaine, Marijuana, and Non-narcotics

1986 Changes



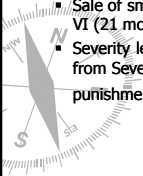
1986 Changes

- ▶ **Sale of larger amounts of drugs**
 - Sale of seven or more grams of narcotics ranked Severity Level VII offense.
 - Presumptive sentence of 24 months.



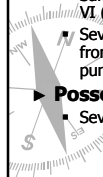
1986 Changes

- ▶ **Sale of larger amounts of drugs**
 - Sale of **seven** or more grams of narcotics ranked **Severity Level VII** offense.
 - Presumptive sentence of **24 months**.
- ▶ **Other Sales of Drugs**
 - Sale of smaller amounts of most drugs remained at Severity Level VI (21 months stayed).
 - Severity level of sale of a small amount of cocaine was increased from Severity Level IV offense to a Severity Level VI offense. The punishment: 21 months (stayed).



1986 Changes

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 - Sale of seven or more grams of narcotics ranked Severity Level VII offense.
 - Presumptive sentence of 24 months.
- ▶ **Other Sales of Drugs**
 - Sale of smaller amounts of most drugs remained at Severity Level VI (21 months stayed).
 - Severity level of sale of a small amount of cocaine was increased from Severity Level IV offense to a Severity Level VI offense. The punishment: 21 months (stayed).
- ▶ **Possession of Cocaine**
 - Severity level for cocaine possession raised from I to III.



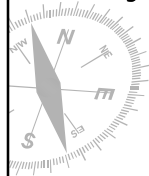
John Smith's sentence:

24 months in prison



1987 Changes

- ▶ Different threshold levels for powder and crack cocaine sales.
 - Three grams for crack
 - Ten grams for powder.



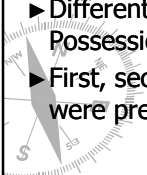
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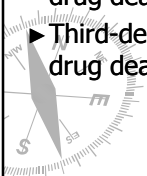
1989 Changes

- ▶ Radical overhaul of guidelines: First, second, third, fourth, and fifth degree.
- ▶ Possession w/ intent to sell eliminated.
- ▶ Different Thresholds for Sale and Possession.
- ▶ First, second, and third degree offenders were presumed to be drug dealers.



Legislative Intent

- ▶ The first degree offenders were "major drug kingpins" or "wholesalers"
- ▶ Second degree offenders were mid-level drug dealers, and
- ▶ Third-degree offenders were street-level drug dealers.



Offense Level	Sale	Possession	Presumptive Sentence
1 st Degree	50g	500g	86 months
2 nd Degree	10g	50g	48 months
3 rd Degree	Any Amt.	10g	21 months, stayed

1989 Thresholds for Cocaine Offenses				
Degree	Sale		Possession	
	Crack	Powder	Crack	Powder
First	10 grams	50 grams	25 grams	500 grams
Second	3 grams	10grams	6 grams	50 grams
Third	Any amt.	Any amt.	3 grams	10 grams

John Smith's sentence:

21 months, stayed

**Powder vs. Crack Cocaine –
*State v. Russell***

- ▶ "The Roof Caves In"
- ▶ Threshold disparity ruled unconstitutional
- ▶ Disparate impact on African American offenders without compelling rational



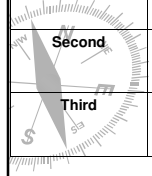
Legislative Response

- ▶ Dropped all hard drug thresholds to those of crack.
- ▶ Abandoned, without discussion, notion that 1st Degree offenders were "true drug kingpins."
- ▶ Added "possession with intent to sell" back into the definition of "sell."




1989 Thresholds for Cocaine Offenses

Degree	Sale		Possession	
	Old	New	Old	New
First	50 grams	10 grams	500 grams	25 grams
Second	10 grams	3 grams	50 grams	6 grams
Third	Any amt.	Any amt.	10 grams	3 grams



John Smith's sentence:


86 months in prison



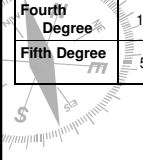
"Buying the Guidelines"

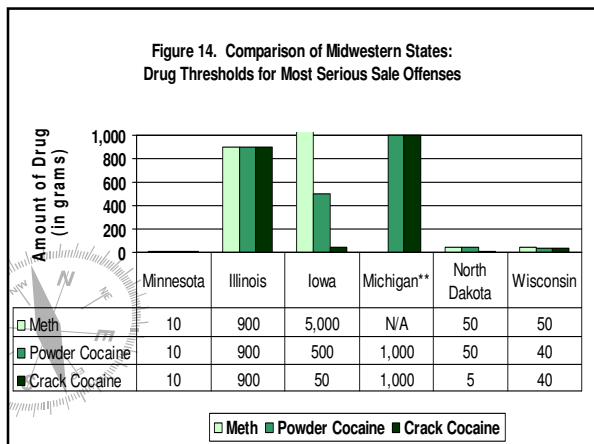
▶ Aggregation

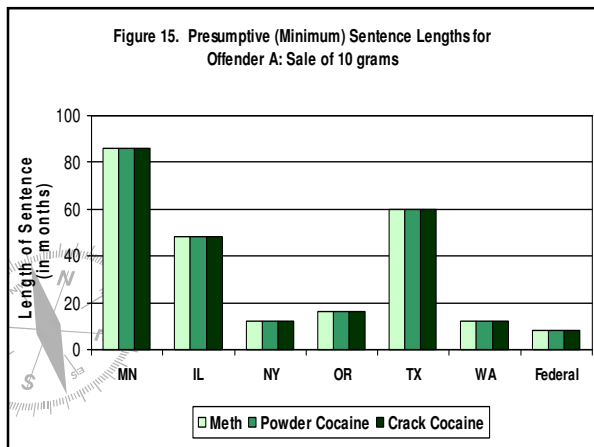
▶ "Hernandizing"

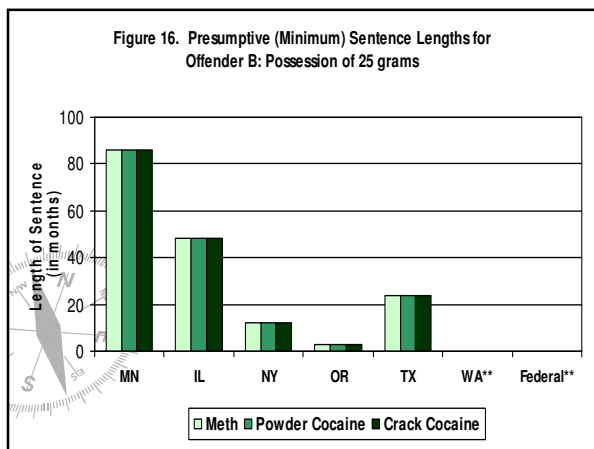


	Statutory Maximum	Sale Threshold	Possession Threshold
First Degree	30 years	10 grams or more	25 grams or more
Second Degree	25 years	3 grams – 10 grams	6 grams – 25 grams
Third Degree	20 years	Less than 3 grams	3 grams – 6 grams
Fourth Degree	15 years	---	---
Fifth Degree	5 years	---	Less than 3 grams









Severity Level Ranking	Presumptive Sentence (Criminal History Score = 0)	Offense
IX	86 months - prison	First-Degree Controlled Substance
		Third-Degree Murder
		First-Degree Manslaughter
		First-Degree Assault
		Kidnapping (great bodily harm)
B	90 months - prison	<i>Second-Degree Criminal Sexual Conduct (subd. c, d, e, f, h)</i>

VIII	48 months - prison	Second-Degree Controlled Substance
		Criminal Vehicular Homicide
		First-Degree Aggravated Robbery
		Burglary (with assault or weapon)
		Drive-By Shooting
C	48 months - prison	<i>Third-Degree Criminal Sexual Conduct (subd. c, d, g-n)</i>
