

May 11, 2022

Dear chairs and members of the conference committee on Senate File 2673:

My name is Nate Reitz, and I am the Executive Director of the Minnesota Sentencing Guidelines Commission. Pursuant to its [statutory mandate](#) to make recommendations to the Legislature regarding criminal-law changes, the Minnesota Sentencing Guidelines Commission respectfully recommends\* that the conference committee delete references to Chapter 152 drug offenses from [article 2, section 23](#), of the Senate’s omnibus public safety bill. These references are found on lines 44.27 through 44.31 of that bill.

For the past 21 months, the Sentencing Guidelines have had in effect a presumptive five-year cap on the length of probation. If a judge considers a longer period of probation to be appropriate, the new guideline simply requires the judge to identify and articulate substantial and compelling reasons why. The new guideline automatically exempts from the presumptive five-year cap specified homicide and criminal sexual conduct offenses.

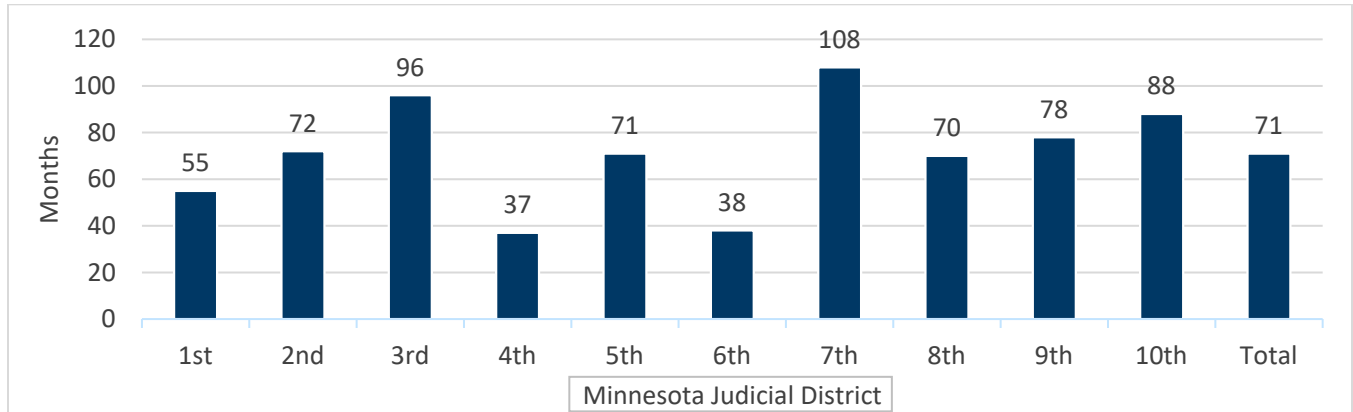
The bill would expand the Sentencing Guidelines’ exemption list by statute, naming about two dozen additional offenses to which the presumptive five-year cap would not apply. While crimes against the person comprise most of the bill’s list, a few listed offenses are not crimes against the person: second-degree burglary, second-degree arson; thefts of firearms, controlled substances, explosives, and incendiary devices; and—the subject of my testimony today—various controlled substance crimes. Apart from third- and fourth-degree possession crimes, the bill would exempt from the presumptive five-year probation cap every drug crime where probation for longer than five years is legally possible.

Why did the Commission decide to cap presumptive probation lengths two years ago? The main answer is data.

- On one hand, the Commission learned that most probation revocations occur, if at all, within the first two years of being put on probation, and that only one percent of probationers are revoked after five years of probation. These data convinced the Commission that a general rule focusing probation supervision on the first five years would help our state to steward its limited supervision resources in the most effective way.
- On the other hand, the Commission learned that a major driving factor in probation lengths was where you were being sentenced, not what you were being sentenced for. This was particularly pronounced when it came to drug sentencing, where we learned that the average drug defendant in one judicial district was being placed on probation for three times as many years as the average drug defendant in another judicial district (Figure 1). This wide geographical disparity convinced the

Commission that its failure to provide a statewide probation-length guideline was harming the equal application of justice.

Figure 1. Average Pronounced Months of Probation for Felony Drug Offenses by Judicial District, 2016–2018



In addition to data, the Commission heard stories from people affected by the lack of a probation-length guideline. One woman, serving a 40-year probationary sentence for a first-degree drug offense, described how this sentence would, for decades, impair her ability to find adequate housing, own a firearm, and travel. Sentenced at age 31, she will be unable to vote again until she is 71 years old.

Stories like this were possible because, before the 2020 Sentencing Guidelines changes, the only limitation on probation lengths was the statutory maximum penalty—and the statutory maximum penalties for the drug crimes mentioned in the bill are very high: 15, 20, 25, 30, 35, even 40 years in some cases. The 2020 Sentencing Guidelines changes imposed the modest requirement of identifying and articulating the substantial and compelling reasons why, in a particular case, such extreme lengths of supervision are warranted.

In the Commission’s view, exempting drug crimes from the Sentencing Guidelines’ presumptive 5-year probation cap would be a step backwards in terms of stewarding our limited supervision resources, in terms of applying justice equally across our state, and in terms of creating a modest and sensible check on the extreme application of judicial power. For these reasons, the Minnesota Sentencing Guidelines Commission recommends removing drug offenses from article 2, section 23, of the Senate bill.

Sincerely,

Nathaniel J. Reitz  
MSGC Executive Director

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\* See minutes of [April 14, 2022, MSGC meeting](#), p. 5 (5–4 vote).