
T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

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Minnesota County Attorneys Association Policy Positions on Drug Control and Enforcement

Introduction

The manufacture, distribution and use of illegal drugs are some of the most overwhelming problems facing our state and nation. The number of crimes that directly and indirectly involve the illegal drug trade is enormous. Minnesota County Attorneys routinely witness the harmful effects of drug abuse and illegal drug trafficking on our society in terms of violence, crime, and physical and mental illness. These harmful effects in turn result in significant costs to our health care, social service and criminal justice systems.

Minnesota County Attorneys recognize that the causes of drug abuse are many and that those who unlawfully traffic drugs are constantly creating new methods of manufacturing and distribution. The multiple causes of drug abuse and the ever-evolving nature of illegal drug trafficking make this an extremely difficult problem to address. It is therefore important that those involved in all branches of government continue to explore new methods and procedures to address the state's drug problem. The Minnesota County Attorneys Association (hereafter "Association" or "Minnesota County Attorneys") supports efforts to review current legislation and explore new methods and procedures to address illegal drug trafficking and drug abuse.

The Association is committed to working with the Governor, Legislature, state departments, criminal justice agencies, private organizations, and the community in exploring new approaches to combat the illegal drug problem. In doing so, the Association believes it is important that any new legislation, policies, or programming proceed cautiously to avoid weakening our state's response to criminal behavior or adversely impacting the interests of pursuing justice. Paramount to any proposal is the need to protect public safety and to recognize that those who knowingly possess, use, promote, manufacture or distribute illegal drugs are personally responsible for their actions and should be held accountable for their criminal behavior.

Policy Positions Adopted by the Minnesota County Attorneys Association

I. Prosecution and Sentencing.

1. The first priority of any state legislation or policy should be protection of the public.

The manufacture, distribution, possession, and use of illegal drugs are not victimless crimes. The 2002 “National Drug Control Strategy” published by the White House estimated that the societal cost associated with drug abuse is \$160 billion per year.¹ The harmful effects of these illegal acts often impact the most vulnerable of our society. A December 2003 report published by the Hazelden Foundation revealed that 57 children were exposed to operational methamphetamine labs in Minnesota in 2002, with most living under the same roof as the methamphetamine manufacturer. Two of the children died.²

There is ample evidence to demonstrate a significant link between illegal drug activity and numerous other crimes. In 2000, the Arrestee Drug Abuse Monitoring (ADAM) Program of the National Institute of Justice, which tests arrestees in 35 major metropolitan areas, found that between 52 and 80 percent of arrested adult males tested positive for illegal drugs.³ Also, it is common for those involved in the manufacture and distribution of illegal drugs to be involved in gang-related activities and to use firearms and other dangerous weapons to promote, expand and protect their criminal operations. In 2003, Minnesota Drug Task Forces reported that their investigations resulted in the seizure of approximately 700 firearms.⁴

Minnesota currently sentences drug offenders to prison at a lower rate than most other states. In 2000, 24% of drug offenders were sentenced to prison in Minnesota, compared to an average of 38% of drug offenders sentenced to prison in other states.⁵

Minnesota County Attorneys believe that state legislation and policy must appropriately acknowledge the dangerous and violent nature of illegal drug activity. More specifically, the Association supports state legislation and policy that provides for lengthy prison sentences with mandatory minimum terms of imprisonment for those who use firearms or engage in violent behavior to promote, expand, or protect their illegal drug operations.

¹ National Drug Control Strategy, The White House, February 2002, p.9.

² Drug Abuse Trends, Hazelden Foundation and the Butler Center for Research, December 2003, p.1.

³ Urinalysis tests conducted at the 35 ADAM sites found that 64.2% (median average with a range of 52.2 % to 79.9%) of adult males arrested had recently used at least one of five drugs (marijuana, cocaine, opiates, methamphetamine, or PCP). See 2000 Arrestee Drug Abuse Monitoring Program (ADAM) Report, National Justice Institute, Appendix Table 1-1.

⁴ Report of Minnesota Drug Task Force Activity Results (1999-2003), Minnesota Department of Public Safety, Office of Justice Programs.

⁵ Minnesota Sentencing Guidelines Commission Report to the Legislature, January 15, 2004, Table 3, pg. 16; and Bureau of Justice Statistic Report, “State Court Sentencing to Convicted Felons, 2000.”

2. State legislation and policy must recognize the need to severely punish repeat or entrepreneurial drug dealers.

Minnesota County Attorneys believe a basic tenet of criminal law is that people are responsible for their own actions. When a person engages in criminal activity that has a repeated or widespread negative impact on a community, it is appropriate for that offender to be subject to a sanction that acknowledges the effect of the illegal activity on the community. The manufacture and distribution of drugs are unlawful enterprises whose operations result in widespread and long term negative impacts on society.

Minnesota County Attorneys believe lengthy sentences for repeat and entrepreneurial drug dealers are important and necessary. Such sanctions significantly disrupt unlawful operations and have a deterrent effect by increasing the potential “costs” of doing business for the drug dealer. Therefore, the Association supports state legislation and policy that provides for lengthy and mandatory minimum sentences for repeat and entrepreneurial drug dealers. State legislation and policy should allow for long sentences for offenders whose incarceration will either have a deterrent effect or where incapacitation is required to prevent a high likelihood of return to the drug trade.

3. Sentences for convicted drug offenders should take into account the impact potential sentences have on the importation of drug dealers to Minnesota and the balance between the state and federal prosecution systems.

Minnesota County Attorneys recognize that any effective approach to combating unlawful drug activity must address the reality that drug networks often spread beyond state borders and that state and federal agencies may have concurrent jurisdiction over a particular case. As a result, state law enforcement and prosecutors must work closely with their federal counterparts to assure that enforcement of drug laws is consistent and takes into consideration the cross-jurisdictional nature of drug trafficking.

The Association believes that state legislation and policy that results in significant reductions in potential sanctions for illegal drug activity will create unjustifiable sentencing disparities between the state and federal criminal justice systems for similar illegal activity. Significant sentencing disparities between the state and federal criminal justice systems may result in an increase in referrals to federal agencies. In addition, significant reductions in state sentences will reduce the potential “cost of business” for drug dealers in Minnesota as compared to other states and thereby encourage illegal drug operations within our state.

4. The unlawful possession of illegal drugs in any quantity should be a crime with appropriate penalties.

Minnesota County Attorneys believe that those who unlawfully possess or use small amounts of controlled substances, including marijuana, negatively impact themselves, their families, and the overall quality of life enjoyed by citizens of a community. Marijuana remains the

most common illegal drug used by adult males arrested for crimes in America.⁶ Use of marijuana, and the culture in which it occurs, often leads to experimentation with other and even more dangerous illegal drugs. Furthermore, those who unlawfully possess smaller amounts of drugs for personal use act as “customers” and support those who manufacture and distribute illegal drugs. The potential imposition of a criminal sanction allows law enforcement agencies to identify and monitor those who unlawfully use or possess illegal substances in their community, provides a useful tool to encourage those who abuse controlled substances to seek treatment, and acknowledges the widespread impact that illegal possession and use of drugs in any amount have upon a community.

Possessing a “small amount” (42.5 grams/1-1/2 oz. or less) of marijuana involves much more than someone smoking a single “joint”. A “small amount” of marijuana, as defined under Minnesota law, can cost as much as \$300-\$600 depending upon its potency.⁷ Persons with this quantity and value of drugs are significant contributors to the illegal drug market. Possession and use of marijuana, which today is far more potent than it was in the 1970’s, poses a much bigger problem than most realize – out of 16 million drug users in America, 77% use marijuana and 60% of teenagers in treatment have marijuana abuse as their primary diagnosis.⁸ Marijuana is also a gateway drug for many – almost 99% of persons using other illegal drugs began by smoking “a little weed”.⁹ Possession and use of small amounts of cocaine, heroin, methamphetamine or other controlled substances pose even greater dangers.

Consequently, the Association supports state legislation and policy that impose appropriate criminal sanctions for those who use and possess small amounts of controlled substances, including marijuana. The term “sanction” is not limited to incarceration. The use of electronic home monitoring, community service programs, fines, imposition of investigative and prosecution costs, and asset forfeiture should also be considered as sanctions. Labeling the possession of small amounts of marijuana as a petty misdemeanor (which is not even considered a crime), as Minnesota law currently does, simply sends the wrong message. Possession of a small amount of marijuana should be a misdemeanor offense. Possession of small amounts of any other controlled substance, irrespective of the weight, should remain a felony under Minnesota law.

5. Local units of government, prosecutors, defense counsel and judges should work together to develop creative options for dealing with drug offenders.

Minnesota County Attorneys recognize that while illegal drug activity is a statewide problem, the type, degree, and effect of illegal drug activity will often vary in local jurisdictions. Minnesota County Attorneys further recognize that the ability of local units of government to dedicate law enforcement, prosecution, court and other resources to combat illegal drug activity will also vary. Therefore, the Association believes it is necessary for

⁶ 2000 Arrestee Drug Abuse Monitoring Program (ADAM) Report, National Justice Institute, Executive Summary, p.1.

⁷ ¼ oz. of marijuana today sells for \$50-\$100 depending upon its potency. See Drug Abuse Trends, Hazelden Foundation and the Butler Center for Research, December 2003, p.4

⁸ An Open Letter to America’s Prosecutors, Executive Office of the President, Office of National Drug Control Policy, November 1, 2002, p. 1.

⁹ Id., p. 3.

local units of government and interested agencies to work together to develop creative options for dealing with drug offenders.

The Association supports the formation and funding of multi-jurisdictional drug task forces to investigate and apprehend drug offenders. Minnesota County Attorneys also support the establishment of diversion programs and drug courts for appropriate offenders (not including those involved in the manufacture and distribution of controlled substances or those who use guns or engage in violent behavior to promote, expand or protect their illegal drug operations), provided these programs are adequately funded, include necessary treatment for the offender, regularly monitor an offender's progress, and adequately address public safety concerns.

II. Treatment, Community Awareness and Prevention.

1. Whenever possible and appropriate, treatment and rehabilitation of drug offenders should be promoted.

Minnesota County Attorneys believe that the definition of success in any drug conviction is the offender's reintegration into society and avoidance of relapse of drug use. The Association believes that treatment plays an important role in the successful reintegration of a drug offender into society. The Association supports state legislation and policy that require all convicted drug offenders to be evaluated for drug dependency and mandate treatment as a condition of any sentence. The Association also supports legislation and policy that would prevent release of drug offenders from prison or probation without a chemical dependency evaluation of the offender and successful completion of a drug treatment program. Conditions of release from probation or prison should also be reasonably related to an offender's circumstances and enforced with an effort to gain compliance, not recommitment.

To encourage participation in treatment, the Association supports legislation and policy that would allow appropriate offenders to earn "good time" credit or early release by participating in and completing treatment and related programming. Any funds saved in the reduction of drug sentences through programs allowing early release from prison upon completing treatment should be utilized for additional treatment and re-entry programs. Minnesota County Attorneys also support state legislation and policy that would utilize existing state hospital space to create a minimum-security prison for non-violent drug offenders that includes and emphasizes treatment components.

2. The state should study the efficacy of varying types and lengths of treatment for different types of drugs and different levels of addiction, so that money available for treatment can be spent wisely.

Minnesota County Attorneys believe there is no one single treatment model that will successfully address every offender's drug use or addiction problems. Often a drug offender's mental and physical health concerns, poor economic condition, or lack of family

and peer support complicate successful treatment programming. Also, the type of drug being used may require a different type of treatment program. For example, the effects of methamphetamine can last up to six months for just one use and the drug can do greater damage to a person's physical, behavioral and thinking functions than many other illicit drugs or alcohol. For this reason, it takes much longer to treat a person with a meth addiction than it does to treat someone with a cocaine or heroin problem.¹⁰

Currently there are a variety of treatment models: public and private, custodial and non-custodial, spiritual and secular, in-patient and out-patient, voluntary and court ordered, individual and group, and cognitive and behavioral. Prosecutors, defense attorneys, judges and correctional staff must have access to a variety of treatment options to effectively address the needs of convicted drug offenders.

The Association supports state legislation and policy that study and identify the most effective treatment strategies and options for drug offenders. For example, the state should study the role of the mental health system in responding to drug addiction to determine whether certain drug offenders, as an alternative to incarceration or in addition thereto, should be civilly committed as inebriates.

3. State legislation and policy should encourage collaborative efforts between government agencies and community members that improve the quality of life and increase community awareness of the dangers of illegal drug activity.

Programs that improve the quality of life in a community and increase awareness of the dangers of drugs have demonstrated effectiveness in reducing drug use and should be promoted and adequately funded. The Association supports collaborative efforts such as Neighborhood Watch, "Weed and Seed", and other programs that bring government agencies and community members together to improve the overall quality of life and increase community awareness as to the dangers of drug abuse.

4. State legislation and policy should provide for regulation of precursors commonly used in the manufacture of methamphetamine.

The unlawful manufacture, distribution, and use of methamphetamine are quickly reaching epidemic levels in Minnesota. Since 1999, Minnesota Drug Task Forces have reported an increase of 178% in the amount of methamphetamine seized as a result of their investigations.¹¹ Much of the methamphetamine that was seized was manufactured within Minnesota. In 2003, Minnesota Drug Task Forces reported the seizure of over 400 methamphetamine labs, up dramatically from the 144 labs seized in 2000.¹² In addition to supporting illegal methamphetamine trafficking, such labs jeopardize the environment and pose substantial health and safety risks to children and other residents of the homes where these labs are located and to the surrounding community. While many of the precursors used in the manufacture of methamphetamine are obtained by methamphetamine manufacturers

¹⁰ Journal of Substance Abuse Treatment, April 2003, Vol. 24, No. 3.

¹¹ Report of Minnesota Drug Task Force Activity Results (1999-2003), Minnesota Department of Public Safety, Office of Justice Programs.

¹² Id.

illegally or under false pretenses, others are often obtained through legal purchases from unknowing legitimate sources. The Association supports state legislation and policy that place appropriate restrictions on precursors commonly used in the manufacture of methamphetamine.

III. Drug Enforcement Funding.

Cost Shifts Must Be Avoided.

The unlawful manufacture, distribution, and use of controlled substances are statewide problems. Illegal drug activity and its negative impact have no boundaries. Local governments are already required to dedicate a significant portion of financial and other resources to the investigation, prosecution, incarceration, and treatment of drug offenders. In addition, social service agencies of counties are often required to provide services to families and others affected by drugs. Funding and the ability of local units of government to dedicate resources to appropriately address the drug problem are limited and vary from jurisdiction to jurisdiction. Minnesota County Attorneys believe that costs associated with combating, treating, monitoring and incarcerating drug offenders should be primarily borne by the state and not local units of government. Therefore, any state legislative and policy changes in state drug laws should include a fiscal study that takes into account the direct and indirect financial impacts such changes would have upon local governments.