

Controlled Substance Crimes –
Current Law and Prosecutorial
Practice in Anoka County

Jessica L. Rugani – Asst. Anoka
County Attorney

September 29, 2010

Professional Background

- University of Minnesota - B.A. , Sociology & Spanish (1992)
- William Mitchell College of Law – Juris Doctor (1995)
- Fourth Judicial District – Law Clerk (1995 – 1997)
- Minneapolis City Attorney’s Office – Asst. City Attorney (1997 – 2008)
- Anoka County Attorney’s Office – Asst. County Attorney (2008 – Present)
 - Felony Drug Prosecution
 - Director, Pre-Charge Diversion Program
 - Liaison to Anoka-Hennepin Drug Task Force

2

Pre-Charge Diversion

- What is Pre-Charge Diversion?
- What is the Purpose?
- What is the Effect?
- Eligibility Requirements
 - Severity Level I & II offenses committed after September 1, 2008
 - No prior felonies
 - Three or fewer misdemeanor or gross misdemeanor convictions

3

Most groups are too small to be statistically significant, but:

- 6/26 offenders who entered pre-charge for a drug case **succeeded**,
- 7/26 failed ,13 remain in the program;

- 11 individuals were facing theft charges, 3 succeeded, 2 failed, 6 remain;

- The prototype is a young, white male, who is drug addicted.

7

Post-Charge Diversion

- What is Post-Charge Diversion?

- What is the Purpose?

- What is the Effect?

- Criteria for Inclusion
 - Severity Level I, II, & III Offenses
 - No prior felonies
 - Three or fewer misdemeanor or gross misdemeanor convictions
 - Real life outcomes

8

Stay of Adjudication – Minn. Stat. §152.18

- What is a Stay of Adjudication?

- What is the Purpose?

- What is the Effect?

- Criteria for Inclusion
 - Controlled substance crimes
 - Not for dealers
 - No prior felonies
 - Real Life outcomes

9

**Stay of Imposition of Sentence –
Minn. Stat. § 609.135**

- What is a Stay of Imposition?
- What is the Purpose?
- What is the Effect?
- Criteria for Inclusion
 - Typically recommended when there are no prior felonies

10

**Controlled Substance Crime –
5th Degree**

- Minn. Stat. §152.025
 - Possession of a controlled substance
- Presumptive Sentence-probation
 - One year + One day stayed (prison)
 - Defendant receives probation and possible time in local jail
- Marijuana
 - Possession – Defendant found with at least 42.5 grams (1.75 oz.)
 - Anoka never prosecuted a case for greater than a 5th degree amount
- Methamphetamine / Heroin / Cocaine
 - Possession – Defendant found with up to 3 grams of above
 - Trace cases
 - Dan Douglas, Anoka Hennepin DTF

11

**“Payables”
– barrier to searching**

- Weapons/large amount of narcotics

Controlled Substance Crime – 4th Degree

- **Minn. Stat. §152.024**
 - Possession of Marijuana with intent to sell
- **Presumptive Sentence**
 - One year + One day stayed (prison)
 - Defendant receives probation and possible time in local jail
- **Marijuana**
 - Possession – Defendant found with any amount of marijuana that he intends to sell

13

Controlled Substance Crime – 3rd Degree

- **Minn. Stat. §152.023**
 - Possession of a controlled substance
 - Possession of a controlled substance with intent to sell
- **Presumptive Sentence**
 - 21 months stayed (prison)
 - Defendant receives probation and possible time in local jail
- **Marijuana**
 - Possession – Defendant found with at least 10 kilograms (**22 lbs.**)
 - Sale – Defendant found with at least 5 kilograms (**11 lbs.**)
- **Methamphetamine / Heroin / Cocaine**
 - Possession – Defendant found with at least 3 – 6 grams
 - Sale - Defendant found with at least 1 or more mixtures of a narcotic drug in schedule I, II, or III (any amount)

14

Controlled Substance Crime – 2nd Degree

- **Minn. Stat. §152.022**
 - Possession of a controlled substance
 - Possession of a controlled substance with intent to sell
- **Presumptive Sentence**
 - 48 months
 - Defendant receives prison sentence
- **Marijuana**
 - Possession – Defendant found with at least 50 kilograms (110 lbs.)
 - Sale – Defendant found with at least 25 kilograms (55 lbs.)
- **Methamphetamine / Heroin / Cocaine**
 - Possession – Defendant found with at least 6 grams
 - Sale - Defendant found with at least 3 grams

15

Controlled Substance Crime – 1st Degree

- Minn. Stat. §152.021
 - Possession of a controlled substance
 - Possession of a controlled substance with intent to sell
- Presumptive Sentence
 - 86 months
 - Defendant receives prison sentence
- Marijuana
 - Possession – Defendant found with at least 100 kilograms (220 lbs.)
 - Sale – Defendant found with at least 50 kilograms (110 lbs.)
- Methamphetamine / Heroin / Cocaine
 - Possession – Defendant found with at least 25 grams
 - Sale - Defendant found with at least 10 grams

16

Departures – Minn. Stat. §152.152

- What is a Departure?
- What is the Purpose?
- What is the Effect?
- Criteria for Inclusion
 - Presumptive prison sentence on a controlled substance crime
 - Defendant amenable to treatment and probation
 - Real life application

17

Prosecution of Felony-Level Controlled Substance Offenses in Anoka County

- Potential steps prior to permanent classification of drug offense as a felony (assumes no prior felony convictions)
 - If eligible, Defendant could receive Pre-Charge Diversion for first offense
 - If eligible, Defendant could receive Pre-Charge Diversion for second offense
 - Upon admission for third offense, Defendant may qualify for a stay of adjudication (Minn. Stat. §152.18)
 - Upon admission or conviction for fourth offense, Defendant may qualify for a stay of imposition (Minn. Stat. §609.135)
 - Upon admission or conviction for fifth offense, Defendant may receive stay of execution – Now it's a felony after 5!
 - Upon admission or conviction for a sixth offense during the probationary for the fifth offense, Defendant will **possibly** receive a prison sentence- now it's prison!

18
