

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
April 18, 2013

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on April 18, 2013 in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Chair Jeff Edblad, Jason Anderson, Hon. Christopher Dietzen, Hon. Carrie Lennon, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, and Sarah Walker. MSGC staff members present were Executive Director Kelly Mitchell, Jackie Braun, Jill Payne, and Anne Wall. Also present were Jim Early from the Attorney General's Office, Al Godfrey, Department of Corrections Best Practices Coordinator, and Robert Stewart, a PhD candidate from the University of Minnesota.

1. Call to Order.

The meeting was called to order at 2:00 p.m.

2. Approval of Meeting Minutes from February 21, 2013.

Motion to approve minutes was made by Jason Anderson and seconded by Hon. Carrie Lennon.

Motion carried.

3. Expungement and Guidelines Criminal History

In February, the Commission considered a letter from Richard Hodsdon from the Washington County Attorney's Office requesting clarification of whether expunged offenses are eligible for use in future criminal history. Commission members agreed that Minn. Stat. § 609A.03 clearly states that an expunged record may be opened for sentencing by ex parte order, and requested draft language to include in the Guidelines commentary to clarify the issue.

The Commission reviewed a proposed comment. One member noted that the lead in phrase, "If a conviction has been expunged," is unnecessary and should be removed to make the sentence more readable.

Motion was made by Hon. Heidi Schellhas and seconded by Hon. Carrie Lennon to adopt the proposed language, as amended, as shown below.

A member asked how this would affect criminal history. Another member clarified that this would simply point practitioners to the statute that already exists rather than creating a new policy. Another member asked how probation agents would be aware of expunged

offenses. Members discussed various ways that this information could be discovered; some offenders may disclose this information, other times this could be found from arrest records.

Motion carried.

Add a new comment following section 2.B as follows:

B. Criminal History

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Comment

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2.B.03. Minn. Stat. § 609A.03, subd. 7(b) provides that:

Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

. . . .

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. . . .

4. Attempt or Conspiracy Offenses that Carry Mandatory Minimums

Kelly Mitchell explained that during the revision process, the policy for how to compute the sentence for attempts or conspiracy when the offense carries a mandatory minimum sentence was made less clear. Staff recommends restoring the previous language to reduce confusion.

Motion was made by Commissioner Tom Roy and seconded by Hon Heidi Schellhas to modify the Guidelines as shown below.

Motion carried.

Modify sections 2.E. and 2.G. as follows:

E. Mandatory Sentences

1. In General. When an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or

more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded area on the applicable Grid. The presumptive duration of the prison sentence is the mandatory minimum sentence in statute or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or conspiracy to commit an offense under Minn. Stat. § 609.175, and the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer. See Mandatory Sentences Reference Table in Appendix 1.

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G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

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2. Attempt or Conspiracy. When an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or for conspiracy to commit an offense under Minn. Stat. § 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense. When the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer.

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5. Outcomes Study: First- and Second-Degree Controlled Substance Offenders

The Commission has previously discussed offenses with high departure rates and has focused on first- and second-degree drug offenses. The Commission requested information on the success rates for first- and second-degree drug offenders who were sentenced to probation. Staff compared two groups of offenders: (1) offenders who were sentenced to prison for first- and second-degree drug offenses, and who were released from prison between 2007 and 2009; and (2) offenders sentenced to probation for first- and second-degree drug offenses between 2007 and 2009. These offenders were followed for three years either from the date of release from prison or from the end of local confinement to compare rates of reconviction for new felony, gross misdemeanor, or targeted misdemeanor offenses.

Departure Information

All offenders in the study who were sentenced to probation received a dispositional departure; 38% of the offenders in the study who were sentenced to prison received a downward durational departure. For offenders who received a departure in many cases the departure was the result of a plea agreement. The most frequently cited reasons for a dispositional departure were: amenable to probation, amenable to treatment, and shows remorse/accepts responsibility. The most frequently cited reason for a durational departure was shows remorse/accepts responsibility.

Comparing Offender Groups

Commission staff compared the prison and probation groups across several demographics to see if there was some discerning characteristic that might explain why they received such different sentences. Prison and probation populations were very similar across race and ethnicity with the prison population having slightly fewer white offenders and slightly more Hispanic offenders. The probation population had more offenders from the other metro region (Anoka, Carver, Dakota, Scott, Washington Counties) and Hennepin County and fewer offenders from Ramsey County and Greater Minnesota, demonstrating that dispositional departure rates are higher in the other metro region and Hennepin County than in Greater Minnesota and Ramsey County.

Of the probation population, 58% had a criminal history score of zero compared to 31% of the prison population. Overall, the prison population had a higher average criminal history score than the probation group. The prison population had a higher proportion of offenders convicted of sale or possession of methamphetamine than of cocaine, but this is due more to the fact that they were sentenced during the meth boon than any significant differences between the two populations. The probation group had a higher percentage of possession offenses (53% versus 46%) and a slightly higher percentage of sale offenses (42% versus 40%). The prison population had a higher percentage of manufacturing methamphetamine offenses (14% versus 5%).

Probationers and prisoners had very similar LSI-R scores; slightly more probationers had low risk levels and slightly more prisoners had moderate risk levels. When comparing LSI-R by criminal history score, the two groups are similar. At a criminal history score of zero, a higher percentage of probationers had low or low-moderate risk scores (45% for probationers versus 41% for prisoners). The highest percentage of offenders was in the moderate risk level at all criminal history scores for both prison and probation groups. A member noted that it appears that there are many offenders in prison that are not deemed high-risk by the LSI-R. Another member expressed surprise that offenders with a criminal history score of six could be assessed to only have a moderate risk even though they have a history of recidivism. It was noted that the LSI-R has been validated

numerous times, whereas the Minnesota criminal history score has not been validated. Members discussed how accurate the Minnesota criminal history score is as a measure of risk. Members expressed interest in a validation study of the criminal history score used in Minnesota.

Overall, the two groups were very similar. Probationers were more likely to have a criminal history score of less than two (78% versus 64%). More prisoners than probationers were from Greater Minnesota (64% versus 47%). Probationers were slightly more likely to be low or low-moderate risk on the LSI-R Scale (37% versus 28%).

Comparing Outcomes

The study next compared re-conviction rates for probationers and prisoners in the study. For probationers, the three year window began after two thirds of the pronounced local time had elapsed after sentencing. For prisoners, the three year window began at the date of release from prison. New convictions include felonies, gross misdemeanors and targeted misdemeanors as recorded by the Bureau of Criminal Apprehension.

Reconviction rates were 21% for probationer and 27% for prisoners. In both groups, most offenders had no new conviction. For the probation group, new conviction rates ranged from a low of 18% at a criminal history score of 0 and .5 to a high of 29% at a criminal history score of 5. For the prison group new conviction rates ranged from a low of 14% at a criminal history score of 0 and .5 to a high of 48% at a criminal history score of 5. At a criminal history score of 0 and .5 the prisoners had a lower new conviction rate; at all other criminal history scores the probationers had a lower reconviction rate.

When compared by LSI-R score, the probation population's new conviction rate ranged from a low of 9% for those who were considered to be low risk to a high 36% for those considered to be high risk. The prison population's new conviction rate ranged from a low of 13% for those considered to be low risk to a high of 47% for those considered to be high risk. The new conviction rate for prisoners and probationers were the same at the low-moderate level; at all other risk levels the probationers' new conviction rate was lower than the prisoners' new conviction rate.

For both the prison and probation populations the most serious new conviction offense was a felony: 10% of probationers were convicted of a new felony; 17% of prisoners were convicted of a new felony. The new conviction offense type was similar for probationers and prisoners for person, property and other offenses. New convictions for drug offenses were higher for prisoners (10% versus 5%). For both the prison and probation groups, offenders with a higher risk level on the LSI-R were more likely to have a new conviction for a felony than offenders at lower risk levels.

A member requested continued consideration of whether the Commission is confident that the Guidelines are effectively sorting the most serious and dangerous drug offenders into prison and that the prison resources are being used responsibly. Another member noted that the public also considers punishment and feels that if someone commits a crime they should be punished. A member noted that the public may have a misconception of the efficacy of this punishment. Members expressed interest in hearing more on this issue from various stakeholders including the public. Members also considered whether increasing availability of treatment in prison would lessen the recidivism rates for those sentenced to prison. Members noted that the difference in cost to the State for sentencing an offender to prison versus to probation is significant. Members expressed concern over action because there are many factors in each case including plea agreements and assistance to police.

Motion to table the issue to allow for continued consideration and future discussion at the next Commission meeting with time available on the agenda was made by Commissioner Tom Roy and seconded by Chair Jeff Edblad.

Motion carried.

6. Other Business

Upcoming Commission Meetings

The Legislature will not have adjourned before the May meeting so the Commission will need to adjust the schedule to allow time to rank new offenses and hold a July public hearing. The Commission will decide the dates for the summer Commission meeting and the public hearing at the regularly scheduled May meeting.

8. Public Input

There was no additional input from the public.

9. Adjournment

Chair Edblad adjourned the meeting without objection at 4:00 p.m.