

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**October 16, 2014**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on October 16, 2014 at the Minnesota Judicial Center; 25 Rev. Dr. Martin Luther King Jr. Blvd.; St. Paul, MN 55155; Room G-31. Commission members present were Sergeant Paul Ford, Judge Carrie Lennon, Cathryn Middlebrook, Judge Heidi Schellhas, DOC Commissioner Tom Roy, Yamy Vang, and Sarah Walker. MSGC staff members present were Executive Director Nate Reitz, and research staff Anne Wall and Jill Payne. Jim Early from the Attorney General's Office was also present. Members of the public were Patrick Courtney, Records and Sentence Administration Program Manager, Minnesota Department of Corrections; and Ryan Erdmann, Director of the Minnesota Association of Community Corrections Act Counties.

**1. Call to Order**

In the absence of the Chair and Vice-Chair, the meeting was called to order by Executive Director Nate Reitz at 2:03 p.m.

**2. Elect Pro Tem Meeting Chair**

A Pro Tem Chair election was held to determine who would Chair the meeting in the absence of the Chair and Vice-Chair. Sarah Walker nominated Commissioner Tom Roy as Pro Tem Chair. There were no other nominations nor objections to Commissioner Roy's nomination.

**Motion** to elect Commissioner Tom Roy as Pro Tem Chair was made by Sarah Walker.

**Motion carried.**

**3. New Commission Member**

The Chair welcomed Cathryn Middlebrook, the newly appointed public defender representative to the Commission. Ms. Middlebrook introduced herself to members, and said that she was appointed the Chief Appellate Public Defender in December of 2013, and has been at the public defender's office since 1986. Ms. Middlebrook works with the Guidelines almost daily as she represents public defender clients throughout Minnesota in both appeals and post-conviction matters.

**4. Approval of Agenda**

The Chair asked for additions, deletions or corrections to the meeting agenda. Hearing none, the meeting agenda was approved without objection.

## 5. Approval of Meeting Minutes from September 18, 2014

The Chair asked for additions, deletions or corrections to the meeting minutes.

**Motion** to approve the meeting minutes was made by Judge Heidi Schellhas and seconded by Yamy Vang.

**Motion carried.**

## 6. Consecutive Sentencing Policy

The consecutive sentencing issue had come before the Commission in January and March of 2014 and was deemed very important by the Commission because it had created a situation in which the supervised release portion of consecutive sentences were not being uniformly administered to offenders. At its March 20, 2014 meeting, staff suggested that it could bring back alternate proposals to address the problems; information on cost of supervision and bed impacts was requested.

The Chair remarked that the agenda item was meant to be mostly educational today; however, if the membership wished to have the consecutive sentencing policies changed by August 1, 2015, it must hold a public hearing and submit the modifications to the Legislature by January 15, 2015. In order to do this in a timely manner, the body must direct its staff to give public notice of the Commission's intent and submit all three proposals forward for public comment where they could receive further input and vetting.

### A. MSGC Staff Presentation on Consecutive Supervised Release

Director Reitz presented information that outlined the problems associated with the administration of the supervised release period for executed consecutive sentences. Currently, Department of Corrections' (DOC) practice for implementing the term of supervised release in consecutive sentences differed from the policy in Minn. Sentencing Guidelines comment 2.F.02; this resulted in the supervised release period of consecutive sentences not being uniformly administered.

The Chair recognized Commission member Judge Schellhas who had questions concerning the timing of the Commissioner's discussion while there were cases before the Minnesota Court of Appeals and the Minnesota Supreme Court. Cathryn Middlebrook opined that the cases before the Minnesota appellate courts were related to conditional release and not supervised release.

Mr. Reitz continued by explaining that there were three proposals offered to remedy the current problems with the supervised release period for executive consecutive sentences:

Proposal 1 would make the current DOC practice explicit in the Guidelines. The supervised release portion of the first sentence would overlap with the term of imprisonment on the

second sentence. As a result of the overlap, the offender would serve the first supervised release term, or at least part of it, in prison.

For example, if an offender was sentenced to 21 months consecutively to a 60-month sentence would serve 54 months in prison, followed by 7 months on supervised release because of the overlap in the supervised release periods. The critique of Proposal 1 was that the supervised release term was relatively short compared to the time of incarceration. Director Reitz explained that, according to Dr. Doug Marlowe's remarks at the NASC Annual conference in August 2014, the release of a high-risk offender after a lengthy term of imprisonment with little or no subsequent community supervision increased public safety.

Proposal 2 was then described by Mr. Reitz. Proposal 2 would move the comment that described how to aggregate consecutive sentences into the Guidelines. That is, that the two executed sentences were to be added together (aggregated) and then the two-thirds term of imprisonment and one-third term of supervised release would be determined from the total time. Under this proposal, the offender would serve more time on supervised release than in Proposal 1. The critique of Proposal 2 would be the estimated increased in supervision costs from \$146,400 to \$312,360, per year. The estimate did not include the increased cost for supervised release revocations to prison which may result from the offenders' additional time spent on supervision and potential for revocation.

Mr. Reitz wished to introduce two staff proposals that were intended to address defects in the current consecutive sentencing policy as it related to people on supervised release. Commission members requested that Proposal 3 be presented next.

Proposal 3 was suggested by Judge Schellhas and intended as a compromise to Proposal 1 and Proposal 2, where the terms of imprisonment would be aggregated, but the longest supervised release term would be imposed. This would allow for longer supervision than under Proposal 1, and would be uniformly applied to defendants because it would be codified in the Guidelines.

Staff misunderstood Judge Schellhas' proposal, thinking that the policy would be applied differently to offenders depending on their custody status. That is, if an offender committed the offense while in prison, the supervised release period would be aggregated, as well. It was clarified by Judge Schellhas that was not her intent. The suggestion that there would be any difference in application under Proposal 3 was dismissed.

Director Reitz next moved on to the staff proposals. The first, Staff Proposal A, would recommend that a consecutive sentence executed after an offender had begun supervised release for the first offense would not affect the calculation of the first supervised release term i.e., once supervised release starts, it cannot be stopped. The Guidelines do not address how to implement a consecutive sentence pronounced after an offender has completed the term of imprisonment for the first offense but remains under DOC custody and control. These consecutive sentences could be for offenses committed before imprisonment, during

imprisonment, or after being placed on supervised release. In 2012, six offenders who had committed an offense while on supervised release received a sentence that was consecutive to the supervised release offense.

Staff Proposal B would eliminate the requirement for consecutive sentencing for offenses committed while on supervised or conditional release because, when the new offense was committed after an offender was placed on supervised or conditional release, concurrent sentencing would always be as long or longer than consecutive sentencing (absent any speculation on the part of practitioners to determine the amount of time that would be revoked on the first offense).

This proposal would not affect a large number of cases. In 2012, 515 offenders who committed an offense while on supervised release received a prison sentence for that offense. Only 23 of the 515 received a consecutive sentence, but 17 received a sentence consecutive to something other than the offense for which they were on supervised release. Only six offenders, or 1.2 percent of the offenders who were imprisoned for committing an offense while on supervised release, received a sentence consecutive to the supervised release offense. Even under Staff Proposal B, consecutive sentences would still be allowed if the offenses qualified under the permissive consecutive sentencing rules.

Staff further explained that the original intent of the presumptive consecutive policy was to create a longer sentence for those who were on supervised release, but that this was very rarely the case. Proposal B was intended to resolve this problem by removing the requirement for consecutive sentencing, but allowing it under the permissive rule as long as it met the criteria (an offense on the permissive consecutive list and an offense that was presumptive commit).

Finally, Mr. Reitz showed a slide comparing the three proposals on ease of administration, community supervision costs, public safety protection, and transparent sentencing. Proposal 3 increased supervision costs but was less than the range estimated for Proposal 2 (\$164,400 to \$312,360 annually). There may be some increased costs to DOC for sentence administration. While DOC has methods to administer both Proposal 1 and Proposal 2, it does not have a method to execute Proposal 3. There may also be an increase in the number of challenges through Habeas Corpus petitions. Proposal 2 and Proposal 3 may increase prison bed costs if the number of supervised release revocations increases because supervised release terms are extended.

## **B. Commission Discussion**

The Chair lead the discussion and reminded the Commission that if it wished to have the consecutive sentencing policies changed by August 1, 2015, it must hold a public hearing and submit the modifications to the Legislature by January 15, 2015. In order to do this, the Chair entertained a motion to direct its staff to give public notice of the Commission's intent

and submit all three proposals forward for public comment where they could receive further input and vetting.

**Motion** to move the timeline and three proposals, with corrections to Proposal 3, forward for public hearing was made by Judge Carrie Lennon and seconded by Sergeant Paul Ford.

Jim Early opined that the Commission could release only one proposal for public comment; i.e., that it would be impermissible to publicly release multiple proposals.

The Commission further discussed it and was reluctant to publicly release only one proposal without further discussion, particularly in the absence of its regular Chair and two other members.

In light of the timeline required for (1) an additional meeting for further discussion before public release, (2) publication, (3) a thirty-day wait period, (4) a public hearing, (5) a five-day wait period, (6) a Commission meeting on adoption, and (7) inclusion of the adopted language in the report to the legislature by January 15, the Commission felt it necessary to have an additional meeting in early November. The date selected was November 6.

**Motion withdrawn.**

## **7. Executive Director's Report**

Executive Director Nate Reitz reported on a Vera Institute conference on justice reinvestment that he will be attending from November 17 to 19 in San Diego, California. He asked for the Commission's input on what seminars looked most worthwhile for him to attend. He will be sending out an email that lists the conference agenda to Commission members requesting their input.

## **8. Public Input**

The Chair recognized the two members of the public who were present at the meeting: Patrick Courtney and Ryan Erdmann. Neither wished to speak at that time.

## **9. Adjournment**

**Motion** to adjourn was made by Judge Carrie Lennon and seconded by Yamy Vang.

**Motion carried.**

The meeting adjourned at 4:05 p.m.