

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**March 20, 2014**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on March 20, 2014 in Administration Building, 50 Sherburne Avenue, Room 116C; St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblad, Hon. Christopher Dietzen, Sgt. Paul Ford, Hon. Carrie Lennon, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, Yamy Vang, and Sarah Walker. MSGC staff members present were Executive Director Kelly Mitchell, Jackie Braun, Jill Payne, and Anne Wall. Also present was Jim Early from the Attorney General's Office.

**1. Call to Order.**

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

**2. Approval of Meeting Minutes from January 16, 2014.**

**Motion** to approve minutes was made by Commissioner Tom Roy and seconded by Hon. Christopher Dietzen.

**Motion carried.**

**3. Conspiracy and Benefit of a Gang Offenses**

At the January meeting, the Commission reviewed the language in § 2.G.10 relating to crimes committed for the benefit of a gang. Because there are two forms of conspiracy under state law – general conspiracy, which halves the sentence duration, and conspiracy to commit a controlled substance offense, which does not impact the sentence – it was unclear whether the term “conspiracy” in § 2.G.10, was meant to refer to both modifiers. The Commission decided to clarify that the shorter benefit of a gang sentencing enhancement applies only to general conspiracy offenses.

**Motion** to adopt the recommended language as shown below was made by Hon. Carrie Lennon and seconded by Commissioner Tom Roy.

A member asked if there would be any bed impact. Staff clarified that it is unlikely to affect many cases. It is simply a clarification of existing policy.

**Motion carried.**

**Recommended Modification to § 2.G.:**

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10. Offense Committed for the Benefit of a Gang. When an offender is sentenced for an offense committed for the benefit of a gang under Minn. Stat. § 609.229, subd. 3(a):

- a. Pursuant to Minn. Stat. § 609.229, subd. 4, the presumptive disposition is always commitment; and
- b. The presumptive duration is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:
  - (1) ~~If the victim of the crime was under the age of eighteen:~~ If the offense does not involve a victim or if the victim was eighteen or older:
    - (i) ~~24~~12 months, if the underlying offense was completed; or
    - (ii) ~~12~~6 months, if the underlying offense was an attempt or conspiracy under Minn. Stat. § 609.175
  - (2) ~~If the offense involves a victim was eighteen or older under the age of eighteen:~~
    - (i) ~~12~~24 months, if the underlying offense was completed; or
    - (ii) ~~6~~12 months, if the underlying offense was an attempt or conspiracy under Minn. Stat. § 609.175

#### 4. **Clarifying Executed Consecutive Sentences**

At the January Commission meeting, the Commission discussed issues in implementing the current consecutive policy. Department of Corrections has expressed that aggregating sentences can be problematic. Commission staff spoke with the Department of Corrections staff to understand all of the potential scenarios and issues that can arise. Kelly Mitchell explained several scenarios where consecutive sentencing could apply and walked the Commission through issues that could arise in each scenario and if aggregating the sentence would be possible.

Kelly Mitchell also explained that offenders who are revoked from supervised release serve accountability time, which is not a fixed duration. Because accountability time is not known until the revocation process occurs, and because the current offense is usually sentenced before the revocation process is commenced, it is often not possible to determine if a consecutive sentence would be longer than a concurrent sentence as per the presumptive consecutive sentencing policy. A member asked if removing aggregation from consecutive policy would resolve many issues of implementation. Some issues

would be resolved by removing the option of aggregation but other issues would remain, particularly how to determine whether concurrent or consecutive sentencing would result in a longer sentence when an offender is revoked from supervised release.

A member expressed that he would prefer that the policy allow for judicial discretion. Members discussed how leaving the options open to the judges would allow for sentences that would best fit the circumstances but may reduce uniformity.

**Motion** was made by Hon. Heidi Schellhas and seconded Hon. Christopher Dietzen for staff to prepare language resulting in presumptive aggregate durations for all consecutive sentences.

Members discussed the importance of considering uniformity and bed impacts in this proposal. Another member voiced preference for clarifying the Guidelines to indicate that both aggregate and standard consecutive sentences are options without a presumption for either. Members also discussed whether the proposal would be for a presumption of aggregation in the absence of clarification while still allowing judicial discretion. A member stated that it is unclear how an offender could be serving supervised release while still in prison and this creates a problem with the policy.

Members discussed the issues that could arise from each proposal and that more consideration of options is likely needed.

Following this discussion, the **motion was withdrawn**. As an alternative, staff proposed bringing back proposals for both presumptive aggregate consecutive sentencing and presumptive standard consecutive sentencing with information on cost of supervision and bed impacts.

Kelly Mitchell also presented a possible policy solution to address presumptive consecutive sentencing for offenders who commit a new offense while on conditional or supervised release following an executed prison sentence. The original intent of the presumptive consecutive policy was to create a longer sentence for those who are on conditional or supervised release at the time of the new offense but the current policy is difficult to implement. A solution may be to remove presumptive consecutive sentencing for offenders on conditional or supervised release and have the sentences be presumed concurrent. Most concurrent sentences would be longer than a consecutive sentence and the policy is more workable. If the Commission wanted to include the idea of greater culpability for these offenders, an additional duration could be added to the duration for offenders sentenced in these circumstances similar to the existing three month custody status enhancement.

A member noted that longer sentences aren't always good. Staff clarified that the current policy is for longer sentences and that this alternative is an idea to simplify the existing policy rather than to change the purpose of the policy.

Members will continue to discuss consecutive sentencing at the next meeting.

## **5. Controlled Substance Offender Study Regression Analysis**

Anne Wall reminded the Commission of previous data on departures for first- and second-degree controlled substance offenses, including four years of data highlighting that departure rates are over 50 percent and vary by criminal history, race, drug amount and where the offender was sentenced. Based on these data, the Commission requested that the staff perform a regression analysis to better understand the relationships between these variables.

Jill Payne explained that the logistic regression prepared by staff predicts the odds of a departure based on the following independent variables: race, criminal history score, judicial district, and drug amount. The data used included first- and second-degree controlled substance offenses sentenced in 2011. Jill Payne explained that whether there was a plea agreement could not be included because almost all cases are resolved through a plea agreement and there is not enough variance for it to be a predictive variable. Staff ran three regression models. Based on the three regression models, several variables were found to be significant. Compared to white offenders, Hispanic offenders were less likely to receive a departure. This was the only statistically significant effect for race/ethnicity. Offenders with criminal history scores of one or more were less likely to receive a departure. Offenders who had twice the controlled substance threshold amount or more were less likely to receive a departure. The 10<sup>th</sup> Judicial District was found to be most similar to the overall state departure rate therefore it was used for comparison. Compared to the 10<sup>th</sup> Judicial District offenders sentenced in the 3<sup>rd</sup> and 8<sup>th</sup> judicial districts were less likely to receive departures while offenders in the 4<sup>th</sup> Judicial District were twice as likely to receive a departure.

## **6. Kelly Mitchell has Resigned as Executive Director**

Kelly Mitchell has resigned from her position as Executive Director of MSGC. Anne Wall has agreed to act as the Interim Director effective March 31, 2014. The Commission's steps for hiring a new Executive Director are approval of the job description, posting of the position, review of applications, and interviews of candidates.

It was explained that the executive committee has traditionally been comprised of the chair, vice-chair, appellate judge, and Commissioner of Corrections. The executive committee has, in the past, volunteered to review and update the job description and post

the position. The executive committee has also in the past selected candidates to be interviewed by the full Commission at a public hearing. It was noted that it would be important to have the job posting available long enough to allow for a wide pool of applicants.

**Motion** to delegate finalizing the job description and posting to executive committee was made by Hon. Christopher Dietzen and seconded by John Stuart.

**Motion carried.**

Chair Edblad recognized Kelly Mitchell's work at the state and national level and the Commission thanked her for her work. Kelly Mitchell expressed her thanks to the Commission and stated that she had learned a great deal and was grateful for the opportunity.

**7. Public Input**

There were no members of the public in attendance.

**8. Adjournment**

**Motion** to adjourn was made by Yamy Vang and seconded by Hon. Heidi Schellhas.

**Motion carried.**

Chair Edblad adjourned the meeting at 3:50 p.m.