Commission’s Authority to Establish Guidelines for Nonimprisonment Sanctions

November 26, 2019

This paper discusses the Commission’s authority to establish guidelines for nonimprisonment sanctions in the context of the Commission’s current proposal—subject to public hearing and final adoption—to place a five-year cap on the length of probation for all offenses but criminal sexual conduct and certain homicide offenses. The observations in this paper are not intended to constitute definitive legal advice, nor to infringe on the inherent authority of the Commission to interpret its own charter statute for itself. Rather, they are intended to serve as a starting point for the Commission’s exercise of that authority.

Grant of Authority

In 1978, the Legislature established the Minnesota Sentencing Guidelines Commission. The Commission’s immediate mandate—found in Minn. Stat. § 244.09, subdivision 5 (1978)—was to promulgate sentencing guidelines for the district court by the January 1, 1980. Those guidelines were to establish both the circumstances under which imprisonment of an offender was proper, and the presumptive sentence for such offenders.

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1 This term, taken from Guidelines Comment 3.A.202, is used in this paper as a shorthand for “guidelines ... establish[ing] appropriate sanctions for offenders for whom imprisonment is not proper.” Minn. Stat. § 244.09, subd. 5.
3 “Judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.” In re Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 278 (Minn. 2001) (citing Krumm v. R.A. Nadeau Co., 276 N.W.2d 641, 644 (Minn. 1979)) (footnote omitted).
4 1978 Minn. Laws ch. 723, art. 1, § 9.
In addition to this mandate, subdivision 5 contained the following grant of authority:

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The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.
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Minn. Stat. § 244.09, subd. 5 (1978). This paragraph has not been materially altered in the intervening 41 years.5

**Exercise of Authority**

The original Sentencing Guidelines6 contained section 3.A.,7 entitled “Establishing Conditions of Stayed Sentences.” Section 3.A.1 (“Methods of Stayed Sentences”) contained general guidance to sentencing courts on when and how to grant a stay of imposition or a stay of execution.8 Section 3.A.2 (“Conditions of Stayed Sentences”) contained general guidance for sentencing courts to consider when establishing conditions of a stayed sentence. While its policy and language have evolved over time, section 3.A yet remains recognizable as having grown out of the original language in the 1980 Guidelines.

Of particular relevance is the first sentence of section 3.A.2. In 1980, that sentence was:

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5 In the paragraph’s first sentence, “sentencing guidelines” is now capitalized. Minn. Stat. § 244.09, subd. 5 (2019).
7 Then “III.A.” To avoid confusion in comparing historical editions of the Guidelines, this paper substitutes Arabic numerals for Roman numerals, consistent with the current Guidelines convention.
8 In a “stay of execution,” a felony prison sentence is imposed (pronounced by the judge), but the execution of that sentence is stayed, usually conditioned upon compliance with specified conditions of probation. In a “stay of imposition,” the prison sentence—stayed or otherwise—is not imposed at the time of sentencing, but the imposition of the prison sentence is stayed—again, usually conditioned upon compliance with specified conditions of probation. See Minn. Stat. §§ 609.135 & 609.14, subd. 3. An offender who receives a stay of imposition of a prison sentence, and who successfully completes probation without subsequent imposition of the prison sentence, will benefit by having the felony conviction legally deemed to be for a misdemeanor instead. Minn. Stat. § 609.13, subd. 1.
The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sentences, although it is the Commission’s intention to do so in the future.

By 1983, the section’s opening sentence no longer proclaimed the Commission’s intention to develop specific guidelines relating to the conditions of stayed sentences in the future:

The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sentences.

In the current Guidelines, the first sentence of Section 3.A.2 similarly begins:

While the Commission has chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences ...

On its face, this longstanding statement—of the Commission’s choice “not to develop specific guidelines [for] the conditions of stayed sentences”—appears to be both:

- The Commission’s acknowledgment of its statutory authority to “establish appropriate sanctions for offenders for whom imprisonment is not proper” within the Sentencing Guidelines promulgated by the Commission; and
- The Commission’s decision not to exercise that authority heretofore.9, 10

**Issue 1: Would a Probation Cap be Advisory or Mandatory?**

As noted above, the Commission’s authority to promulgate guidelines for nonimprisonment sanctions is found in Minn. Stat. § 244.09, subdivision 5. Under the text of that subdivision, such guidelines, if promulgated, would be a subset of the Sentencing Guidelines promulgated by the Commission.11 Thus, the subdivision’s principles applicable to Sentencing Guidelines generally may likewise apply to

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9 The Commentary is consistent. The current version of Comment 3.A.202 begins, “While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation.”

10 Prompted by the Legislature, the Commission studied nonimprisonment guidelines several times between 1978 and 1989. For more information about that history, refer to the memo from MSGC Exec. Dir. Nate Reitz to Hon. Christopher J. Dietzen, Chair, dated April 10, 2018 (“Has the MSGC ever promulgated probation guidelines or related rules?”) (included in the materials of the April 12, 2018, MSGC meeting) (retrieved Nov. 13, 2019, at http://mn.gov/msgc-stat/documents/meeting materials/2018/April/BackgroundMemoChair_ProbationGuidelines.pdf).

11 “The Sentencing Guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper.” Minn. Stat. § 244.09, subd. 5 (2019).
guidelines for nonimprisonment sanctions (if the Commission chooses to promulgate such guidelines). Those principles include the following:

The commission shall promulgate Sentencing Guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court ... .

* * *

Although the Sentencing Guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. ...

Minn. Stat. § 244.09, subd. 5. In addition, Minn. Stat. § 244.10, subdivision 2, imposes the following requirement upon a felony sentencing court:

Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the Sentencing Guidelines in each case in which the court imposes or stays a sentence that deviates from the Sentencing Guidelines applicable to the case.

In interpreting these provisions, the Minnesota Supreme Court has held that the advisory nature of the Minnesota Sentencing Guidelines ("advisory to the district court") is constrained by the Guidelines’ mandatory procedures ("the court shall follow the procedures of the guidelines")—and that, because those procedures are mandatory, the sentencing court is not free to depart from the Guidelines’ presumptive sentence without articulating the substantial and compelling circumstances that the Guidelines require. State v. Shattuck, 704 N.W.2d 131, 141 (Minn. 2005).

In the context of the proposed five-year probation cap, a review of Shattuck raises the following question: Would the proposed probation cap be merely “advisory to the district court,” or would it be one of the “procedures of the guidelines” that the sentencing court “shall follow”?

On one hand, the proposal before the Commission is arguably procedural, and therefore mandatory. The proposal is found in the context of section 3.A, which describes the procedure for granting a stayed sentence. If adopted, the probation cap would become part of the procedure for granting a stayed sentence, and, as such, part of the “procedures of the guidelines” that the sentencing court “shall follow.”

On the other hand, the proposal before the Commission arguably contains no procedures; it simply establishes a five-year cap on probation, with no guidance on standards for deviation. Without such procedures—which, if they existed, would apparently be mandatory—one might argue that the proposed probation cap is merely “advisory to the district court,” and sentencing judges who wished to
exceed such a cap would arguably be free to do so, based on whatever criteria they deemed to be relevant.\textsuperscript{12}

If the Commission were to resolve this potential problem by establishing procedures for exceeding the five-year probation cap, it should bear in mind the holding of \textit{Shattuck}: the sentencing court may not impose an aggravated departure from the Sentencing Guidelines based upon its own findings; instead, an aggravated departure must be based on the findings of a jury, the defendant’s own agreement, or the fact of a prior conviction. Would this principle apply to procedures within guidelines for exceeding the recommended nonimprisonment sanctions?

On the other hand, if the Commission were to resolve this potential problem by explicitly stating that the five-year probation cap was merely advisory, an intended effect of the modification—to make probation durations more uniform—might be thwarted.

\textbf{Issue 2: Does the Scope of Authority Include Probation Durations?}

Does the grant of authority to establish guidelines for nonimprisonment sanctions—to “establish appropriate sanctions for offenders for whom imprisonment is not proper” within the Sentencing Guidelines promulgated by the Commission—include probation durations among those sanctions? Not explicitly.

The statute does make the following explicit:

- The Commission must promulgate \textit{Sentencing Guidelines}.
- Those Sentencing Guidelines may establish appropriate \textit{sanctions} for offenders for whom imprisonment is not proper.
- Any guidelines establishing such sanctions must specifically refer to \textit{noninstitutional sanctions}.
- Among those noninstitutional sanctions are \textit{probation and the conditions thereof}.

Thus, although the grant of authority includes a nonexclusive list of noninstitutional sanctions that must be referred to within guidelines for nonimprisonment sanctions, the regulation of probation \textit{durations}, specifically, is not on that list. May the Commission therefore infer that the Legislature did not include such regulation in the grant of authority?

Not necessarily. The list is nonexclusive (“including but not limited to”) and does include “probation and the conditions thereof.” When interpreting its charter statute, the Commission may reasonably conclude that one of the most important elements of “probation and the conditions thereof” is the amount of time such probation will last, and that it therefore does have the authority to include

\textsuperscript{12} It does appear that, even without Guidelines procedures, the sentencing judge would be required to “make written findings of fact as to the reasons” for deviating from the Guidelines, Minn. Stat. § 244.10, subd. 2, but, in the absence of Guidelines procedures, the nature of those reasons may be entirely up to the sentencing judge.
probation durations within the appropriate sanctions for offenders for whom imprisonment is not proper.

**Issue 3: What Other Constraints are Placed on the Grant of Authority?**

While the Commission is not required to exercise its authority to establish guidelines for nonimprisonment sanctions, the statute imposes a requirement upon the Commission if it chooses to do so. Guidelines for nonimprisonment sanctions “shall make specific reference to noninstitutional sanctions,” including, but not limited to, eight noninstitutional sanctions listed in the statute.

Arguably, section 3.A of the existing Sentencing Guidelines (reproduced in the Appendix) already makes specific reference to most of the noninstitutional sanctions on the list.

- For “payment of fines,” see Guidelines section 3.A.2(5).
- For “day fines,” see section 3.A.2(5).
- For “restitution,” see section 3.A.2(3).
- For “community work orders,” see section 3.A.2(3).
- “Work release programs in local facilities” is not obviously addressed in the existing Sentencing Guidelines.
- “Community based residential and nonresidential programs” is not obviously addressed in the existing Sentencing Guidelines.
- For “incarceration in a local correctional facility,” see section 3.A.2(1) & (2).
- For “probation and the conditions thereof,” see section 3.A.2(2) & (4).

Thus, it appears that the existing Sentencing Guidelines may already make specific reference to six of the eight listed noninstitutional sanctions, but that any new guidelines for nonimprisonment sanctions may also need to make specific reference to “work release programs in local facilities[ and] community based residential and nonresidential programs.”

3. Related Policies

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the appropriate cell on the applicable Grid specifies a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must pronounce the length of the stay, which may exceed the duration of the presumptive prison sentence, and may establish appropriate conditions.

   a. Stay of Execution. When ordering a stay of execution, the court must pronounce the prison sentence duration, but its execution is stayed. The presumptive duration is shown in the appropriate cell.

   b. Stay of Imposition. When ordering a stay of imposition, the court must not pronounce a sentence duration, and the imposition of the sentence is stayed.

   The Commission recommends that stays of imposition be used for offenders who are convicted of lower severity offenses and who have low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

Comment

3.A.101. The use of either a stay of imposition or stay of execution is at the discretion of the court. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and should be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, courts use stays of imposition most frequently for these types of offenders.

3.A.102. When a court grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell on the applicable Grid, and may be as long as the statutory maximum for the conviction offense. See Minn. Stat. § 609.135, subd. 2. Thus, for an
offender convicted of Theft over $5,000 (Severity Level 3), with a Criminal History Score of 1, the duration of the stay could be up to ten years. The 13-month sentence shown in the Guidelines is the presumptive sentence length and, if imposed, would be executed if: (a) the court departs from the dispositional recommendation and decides to execute the sentence; or (b) the stay is later revoked and the court decides to imprison the offender.

2. **Conditions of Stayed Sentences.** While the Commission has chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

- deterrence;
- public condemnation of criminal conduct;
- public safety;
- rehabilitation;
- restitution;
- retribution; and
- risk reduction.

The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The Commission urges courts to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. The Commission further urges courts to consider the following principles in establishing the conditions of stayed sentences:

(1) **Retribution.** If retribution is an important objective of the stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender. A period of confinement in a local jail or correctional facility may be appropriate.

(2) **Rehabilitation.** If rehabilitation is an important objective of the stayed sentence, the court should make full use of available local programs and resources. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds.
(3) Restitution. The Commission urges courts to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for offenders with short criminal histories who are convicted of property crimes, although the use of these conditions in other cases may be appropriate.

(4) Supervision. Supervised probation should be a primary condition of stayed sentences.

(5) Fines. If fines are imposed, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

Comment

3.A.201. The court may attach any conditions to a stayed sentence that are permitted by law and that the court deems appropriate. The Guidelines neither enlarge nor restrict the conditions that courts may attach to a stayed sentence. Minn. Stat. § 244.09, subd. 5 permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop guidelines during its initial guideline development effort. The Commission has provided some language in the above section of the Guidelines that provides general direction in the use of conditions of stayed sentences.

3.A.202. While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.
December 9, 2019

Dear Chair Mitchell and Members of the MN Sentencing Guidelines Commission:

ISAIAH is an organization of people of faith working for racial and economic justice in Minnesota. With over 200 congregations and 30 mosques, as well as childcare centers and barber shops, we are a vehicle for thousands of people to put their values into action in the public arena.

We believe Minnesota can build a justice system with restoration and redemption at its foundation, rather than punishment or retribution. Minnesota prides itself on being “above average,” yet we have not overcome an ugly legacy of racism. We want Minnesota to lead the way in dismantling mass incarceration and mass punishment which continually erodes efforts to build racial equity in our state.

Probation sentences in Minnesota are erratic and often much too long. This fuels mass incarceration, and does nothing to promote public safety. The evidence is clear:

- Minnesota has the fifth-highest rate of community supervision (including probation) in the country. MN has nearly 100,000 people on probation – more than twice as many as Wisconsin.
- Average Minnesota probation sentences vary widely across the state. In Hennepin County and Northeast corner of the state the average probation sentence is just over 3 years, while sentences in Ramsey County and the far Southeast corner average between 6-7 years.
- Minnesota state law allows for people to spend up to 40 years on probation. Extreme probation terms increase the probability for technical violations, which often lead to incarceration. In fact, about 60% of the total prison admissions in MN are for technical violations, not a new crime.
- Research shows that reoffending while on supervision is most likely to occur within the first two years of supervision. Requiring an individual to stay on probation for decades does not improve compliance or result in better criminal justice outcomes.

We were pleased to see MSGC move a probation reform proposal forward to a public hearing on December 19. There has been significant public interest in attending and speaking at this hearing. Therefore we were alarmed to learn of the effort to rescind this reform and cancel the public hearing. We would ask, what possible public purpose would be served by preventing the public’s opportunity to speak out on this important issue?

The Sentencing Guidelines Commission was set up to “maintain uniformity, proportionality, rationality, and predictability in sentencing.” We believe the Commission should adopt a cap on probation sentences. We hope you will oppose efforts to silence the public voice and support probation reform.

Sincerely,

Lars Negstad
Policy Director, ISAIAH
Please do not cancel the hearing on the subject for December 19th.

I work at St. Stephen's Homeless Shelter and have many clients who cannot find jobs or housing due to probations of great length. It is so terrible to not give folks a chance to find their way back.

At least do the hearing. Hear the stories. Listen and then decide.

Thank you from many men served at the shelter who are really trying, but set up to fail due to probation.

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Regards,
Kay Strand
I am a member of ISAIAH and understand that there is consideration to not hold the public hearing on December 19th about Probation reform. I am a strong supporter of this reform and request that you hold the hearing as planned. This is not a time to continue practices that do no ensure public safety, rather promote mass incarceration and marginalization of minority segments of our citizens. It is time we wrestle with this and bring about practices that allow people to return to productive lives unencumbered by lengthy probations. Please hear us out about our concerns. I am unable to attend on December 12th to voice my concerns so I ask that you share this e-mail with the 11 members of the committee before a decision is made to cancel. Thank you.

Respectfully,
Jane Legwold, MS, APRN, LMFT
612-406-3816
Hello,

It has come to my attention that there is a proposal to cancel the meeting scheduled for December 19 regarding setting a probation cap at 5 years. As a Minnesotan and an educator involved in assessing the impacts and outcomes of our criminal justice system on families and communities, I want to express my support for moving forward with the meeting and addressing the cap.

Regards,
KCH

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K. C. Harrison, Ph.D. (pronouns: she/her/hers)
Youth Studies Program, School of Social Work
College of Education and Human Development
University of Minnesota
173 Peters Hall
1404 Gortner Ave.
St. Paul, MN 55108
kharriso@umn.edu
I strongly support the proposal for probation reform which will be discussed at the public meeting on Dec 19, 2019. Please do not support any motions to cancel that meeting nor to withdraw the proposal altogether. Please share my concerns with all the commissioners.

Paul Magee
764 Lincoln Ave
St. Paul, MN 55105
Dear Commission Members:

I am writing to urge you to move forward with the December 19 public hearing on probation reform. I served as the executive director of the American Probation and Parole Association for 20 years. In this capacity I was involved in numerous nationally represented work groups related to improving correctional policies and practices - including probation. There is currently an effort by national probation leaders to reform probation. Minnesota should not ignore this opportunity to correct the over-use of probation by eliminating public discourse about the issue. Further, if I can be of any assistance, please feel free to contact me.

I request that you share this email with all the of the Sentencing Commission members.

Sincerely,
Carl Wicklund
6928 Langford Drive
Edina, MN 55436
(859) 333-4088
Minneapolis NAACP Urges the Minnesota Sentencing Guidelines Commission to Hold Public Meeting

FOR IMMEDIATE RELEASE
December 11, 2019

CONTACT: Leslie President: president@mplsnaacp.org 202-840-1410 (cell)

Minneapolis, MN – William Gladstone once said “justice delayed, is justice denied.” This is precisely why the Minnesota Sentencing Guideline Commission (MSGC) must move forward with the public hearing scheduled for December 19, 2020. Delaying this meeting would likely remove the ability of the MSGC to act on probation this year.

It is well documented that Minnesota has some of the worst racial disparities in the nations. While Minnesota prides itself on having one of the lowest prison populations, it has one of the highest probation rates in the nations. These lengthy terms have a disparate impact on people of color. Many public safety officials have testified that these lengthy terms are not proportional and they do not promote public safety. Instead, the current systems leave probation officers with an unmanageable load and waste valuable tax payers dollars.

This body has ignored the concerns of impacted communities generally, and people of color specifically, long enough. To move to delay public input would be a devastating demonstration of how this body regards its relationship with the public it serves.
Greetings - Please share this will all eleven members of the Commission. I cannot attend the regular Commission meeting tomorrow to offer my comments there.

I am a lifelong Catholic and Minnesotan, a current resident of St. Paul and a leader and board member of ISAIAH. I am planning to attend the planned public hearing on proposed probation reform on December 19. I recently learned that the proposed probation cap may be rescinded and the hearing cancelled. I strongly object and urge you to move forward with the hearing and with the proposed reform.

I believe that our criminal justice system needs to be about reform, redemption and public safety. We are all - white, black or brown, old-timer or newcomer - better off when more Minnesotans are engaged, contributing community members. Lengthy probation terms are not good for anyone and serve no useful purpose to our community. They don’t improve compliance, increase public safety or result in better justice outcomes. Instead they serve to accelerate mass incarceration, which is destroying our families and neighborhoods.

It is exactly the job of the Commission to “maintain uniformity, proportionality, rationality and predictability in sentencing.” Probation sentences in Minnesota are neither uniform nor rational. I strongly urge the Commission to hold firm to your mission and to adopt a cap on probation sentences as soon as possible.

Sarah Gleason
651-335-4507
sarahgleason@mac.com
Web site information request by david.fosterbolton@gmail.com on 2019-12-11.

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description: I support a cap and reform for probation. Because without it long it fuels mass incarceration and does not promote public safety. I have heard the reform hearing on dec 19 might be canceled. why? Do not cancel. this reform is long overdue and only a small step to reforming our punitive mass incarceration system please share my comments with the members of the commission
December 12, 2019

Dear Members of the Minnesota Sentencing Guidelines Commission,

NAMI Minnesota is a statewide grassroots advocacy organization that champions justice, dignity, and respect for all people living with mental illnesses through education, support, and advocacy. A major issue we are trying to address is the overrepresentation of people living with mental illnesses in the criminal justice system. We have been following the proposal to modify the sentencing guidelines and cap probation sentences at five years for lower level offenses. We support this proposal and have been promoting the Public Hearing scheduled for December 19th, 2019 to the mental health community.

While probation serves an initial purpose in the criminal justice system, we believe lengthy and overbearing sentences do not serve the public good, and often create barriers for people living with mental illnesses to access the treatment they need to recover. Lengthy probation sentences unreasonably extend the stress and vulnerability of supervision, a stress that can be compounded for a person who is living with a mental illness. The Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota has cited research showing that longer probation sentences do not reduce recidivism. In that same article, the Robina Institute cited your own commission’s report documenting disparities in probation sentences in Minnesota regionally and by type of crime. Racial disparities are also well-documented across the criminal justice system, and as previously stated, we know that any disparities in the justice system mean disparities for people living with mental illnesses.

In following this issue, we have become aware that action on this proposal at the public hearing may be postponed. We are aware of the statute that requires proposed modifications to be submitted to the Legislature by January 15th. Given the hectic end-of-year schedule, it seems apparent that delaying this public hearing would in effect delay movement on this important issue for an entire year. Furthermore, regardless of arguments for or against a cap on probation sentences, the stated purpose of the Sentencing Guidelines is to “embody the goals of the criminal justice system as determined by the citizens of the state through their elected representatives.” We believe it is the duty of the Commission to hear from the public. We see no good reason to postpone this hearing and we urge the Commission to maintain their commitment and hold this hearing.

Sincerely,

Sue Abderholden, MPH  
Executive Director

Elliot Butáy  
Criminal Justice Coordinator

1919 University Ave. W., Suite 400, St. Paul, MN 55104  
651-645-2948 | 1-888-NAMI-HELPS | www.namimn.org
Dear Commissioners,

I am writing in support of the probation reforms that you are currently considering. I see that on your agenda today you are considering a motion to rescind the reforms as well as a motion to postpone a public hearing. In the interests of transparency and accountability, I urge you to reject these motions.

Full consideration of the reforms in conversation with the public is necessary. Currently, Minnesota has the fifth-highest rate of community supervision (including probation) in the country, and with more than 100,000 people on probation, twice as many people on probation than Wisconsin, a larger state. The exorbitantly high upper cap on the length of probation (up to forty years) increases the likelihood of technical violations, thereby contributing to larger incarcerated populations as well. In addition, the high variation of probation sentences contributes to disparities based on race, ethnicity, geography, and just plain luck in terms of which prosecutors and judges a person faces in the criminal justice systems. Such variation violates principles of proportionality in passing sentences and tends toward decreasing the possibility of rehabilitation under community supervision as the criminal justice system seems capricious and unfair, decreasing its legitimacy in the eyes of the public.

Part of your charge as a commission is to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Our current probation laws do not abide by any of these standards. Your duty as commissioners is to consider these reforms fully and to ensure public accountability for your work through a full public hearing.

Thank you for your time and consideration.

Sincerely,

Amy Levad

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Amy Levad, PhD
she/her/hers
Associate Professor of Moral Theology
University of St. Thomas
2115 Summit Avenue
St. Paul, MN  55105
651.962.5318
amy.levad@stthomas.edu
I am writing to express my support for imposing a cap on probation sentences. I also believe the public hearing should take place on December 19. Please forward this email to all members of the commission.

Kimberly Wilburn
Dear Commission Members:

I am writing to urge you to move forward with the December 19 public hearing on probation reform. I am a leader with ISAIAH and have been heavily involved in Community Organizing in the Twin Cities for the past 5 years. In that time I have worked on issues related to improving correctional policies and practices, including probation.

There is currently an effort by national probation leaders to reform probation. Minnesota should not ignore this opportunity to correct the over-use of probation. Public discourse about the issue is needed and desired. Please allow the people of Minnesota to share their views on this important matter with you.

I request that you share this email with all the of the Sentencing Commission members.
Sincerely,

Mary Jo Malecha
1433 18th St NW
New Brighton, MN 55112

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Mary Jo Malecha
651.398.9161

"Not everything that is faced can be changed, but nothing can be changed until it is faced."
~ James Baldwin
Hello,

I'm reaching out to express my interest in probation reform - which feels essential to creating a society that better allows all of us to participate - and ask that you please allow the public hearing on Dec 19 to move forward. I ask as well that you share this email with all 11 members of the commission.

Thank you very much,
Track Trachtenberg (zip code 55406)
PLEASE SEND MY REQUEST TO GO FORWARD ON YOUR DEC 19TH MEETING AND ALLOW THIS PRISON REFORM WORK TO GO FORWARD WITHOUT FURTHER DELAY. YOU HAVE NO RIGHT TO HOLD THESE PEOPLE CAPTIVE FOR LONGER THAN THEY DESERVE THINK AGAIN AND PASS THIS ONTO TO ALL OF YOUR COMMISSIONERS.

MARY REGNIER mary.brilliantliving@gmail.com
I believe that probation guidelines need revision and that your commission needs to hold the December 19th public hearing in order to hear more voices in this discussion. To rescind this meeting would be an unfortunate denial of the need for the public to speak.

Ron Joki
St Louis Park, MN 55426
rejslp@aol.com