

Minnesota Sentencing Guidelines Commission
Public Hearing Summary
December 23, 2015

A public hearing of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 23, 2015, in Room 10 of the State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155. Commission members present were Chair Justice Christopher Dietzen, Sergeant Paul Ford, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, Judge Heidi Schellhas, and Senior Judge Mark Wernick. MSGC staff members present were Executive Director Nate Reitz and staff members Kathleen Madland, Anne Wall, and Jill Payne. Assistant Attorney General Jim Early was also present.

A. Call to Order

The Chair called the meeting to order at 2:00 p.m., and thanked everyone for attending the public hearing.

1. Purpose of Hearing

The Chair stated that the purpose of the public hearing was to take public testimony on the proposed amendments to the Minnesota Sentencing Guidelines and Commentary resulting from non-legislative amendments to controlled substance offenses, and non-legislative amendments to consecutive sentencing policies.

The Chair made an opening statement explaining the drug reform proposal.

The Chair stated that the Commission has been considering the topic of drug sentencing for many years. Between 1989 and 1998, through a series of legislative and Guidelines changes, the severity of Minnesota's criminal drug penalties grew significantly. The Commission began examining options for drug sentencing reform as early as 1995, and repeatedly thereafter. In 2003, the Legislature asked the Commission to report drug sentencing findings and recommendations. In 2007, the Legislature directed the Commission to propose changed rankings for drug offenses. In 2008, the Legislature created a working group on controlled substance laws, with directions to report its findings and recommendations. During these years, neither the Commission nor the Legislature made policy changes related to drug sentencing reform.

The Chair stated that, in October, 2013, the Commission held a round table to discuss the most recent data on first- and second-degree controlled substances and

sought feedback from various criminal justice stakeholders. Since that date, the Commission has discussed the topic of drug sentencing at many meetings. During the 2015 legislative session, three drug reform proposals—House File 2107 and Senate Files 773 and 1382—were submitted to the Senate and the House. Unfortunately, the bills did not receive a hearing or make it out of committee.

The Chair stated that, when the Legislature failed to act on drug sentencing reform in the 2015 legislative session, the Commission more earnestly discussed the topic. By August the Commission determined that some action was necessary.

The Chair explained that the modifications are the result of several meetings of the Commission that culminated in a vote to provisionally adopt the modifications subject to a public hearing to take testimony and a final vote on December 30, 2015.

The Chair stated that, prior to the Commission vote, he met with various stakeholders to better understand their point of views, including prosecutors, public defenders, judges, and representatives of law enforcement. Chair Dietzen said that he found those meetings to be productive and that he learned a lot, including that drug sentencing is part of a larger drug problem in this country, and that the drug problem is serious, complicated, and requires a comprehensive solution. Drug sentencing reform is part of the solution.

Chair Dietzen stated that the proposal being heard today for drug sentencing reform was one that he prepared, was a compromise, and was intended to be fair, reasonable, and comprehensive, but he was sure that there were parts that individual stakeholders did not like.

The Chair explained the three major components of the drug sentencing reform proposal. First, it separated first-degree sale and possession on the drug offender grid to recognize that drug users are less culpable, and therefore should receive a lesser sentence than drug dealers. The presumptive sentences for first- and second-degree possession were reduced to reflect the lesser culpability. Moreover, our data shows that drug possession offenders typically receive downward departures from the presumptive sentence. The goal of truth in sentencing requires that the presumptive sentence should be adjusted to accurately reflect the sentence an offender will receive for the crime committed. Further, the adjustment was necessary to correct a significant disparity between sentences received by an offender in the metro area vs. Greater Minnesota. Specifically, the downward departure rates in Hennepin County are significantly higher compared to Greater Minnesota. To promote uniformity in sentencing for the same crime in different parts of Minnesota is one of the Commission's goals. Additionally, the Commission

reduced the sentence for first-degree sale based on a ten-year study to reflect the sentence actually given for that offense. This change should be made to satisfy the goal of truth in sentencing.

Second, Chair Dietzen explained, the proposal adds all of the lawful aggravating factors proposed by law enforcement and the prosecutors in HF 2107. The Commission recognized that law enforcement and the prosecutors were concerned that they have the ability to go after drug dealers. The new aggravating factors give prosecutors the ability to double the presumptive sentence against drug dealers if they prove two or more aggravating factors. For example, if the prosecutor is able to prove in court that the offender sold drugs in three counties and used a gun in the commission of the offense, the sentence could be doubled by the judge. The new aggravating factors give the prosecutors the tools they need to go after the drug dealers.

The Chair added that he intended to propose to the Commission at its meeting December 30th, that it adopt a resolution recommending that the Legislature amend the criminal code to add two new offences to first-degree drug possession. Currently first-degree is possession of 25 grams or more of cocaine, meth, or heroin. The Chair said that he would add and enhanced possession for 50 grams or more, and more enhanced possession for 75 grams or more.

Finally, the Chair stated, the proposal adds a mitigating factor that allows the judge to send a person convicted of drug possession to drug court and treatment if that person is truly chemically dependent and wants to get better. Most people agree that long prison sentences for drug users who are chemically dependent does not help them get better.

The Chair stated the reasons why he recommended the proposal.

- a. There are chemically dependent drug users who are not receiving treatment.
- b. We have a problem with truth in sentencing and disparity in sentencing.
- c. We have seen an increase in the number of individuals who are incarcerated for drug offenses. Minnesota's prison population has increased from 5,485 in 1995 to 10,090 in 2015, which is an 84% increase. During that same time period, the prison population for drug offenses increased from 704 to 1,911, which is a 171% increase. Commissioner Roy tells us our state prison facilities are full.
- d. The proposal will positively affect public safety. Currently, drug users are convicted of drug possession offenses, and the related offenses of theft, and

burglary to support their habit. The downhill spiral of the drug user's life takes down the family through job loss and often abuse and neglect of their children. This proposal will give drug users who are truly chemically dependent the treatment they need to get better, and to take their lives back. The benefit to public safety is clear. The drug user who stops using drugs will be able to rebuild his or her life and become a productive member of society. When this happens the overall number of drug users and the crime rate attributable to drug use will drop. In sum, offenders need to be punished for the crimes they commit. But longer prison sentences do not help those who are chemically dependent get better, and become productive members of society.

- e. Finally, the proposal will give law enforcement and prosecutors additional tools to go after drug dealers. The new aggravating factors allow the prosecutors to seek high sentences against drug dealers.

2. Public Hearing Procedures

Copies of the proposed amendments were available in the room. Persons who registered in advance with Commission staff were called to testify first. Then other people wishing to testify were called forward and registered their name, address, telephone number, and the names of any individuals or associations that the person represented in connection with the hearing. The Chair explained that, under the rules, people may address questions to the Commission, its staff, or witnesses, and the Commission or its staff were allowed to ask questions. The Chair said that written testimony was acceptable in lieu of oral testimony. The Chair stated that the record remained open for six calendar days after the hearing to accept and record written materials.

On Wednesday, December 30, 2015, the Commission will meet at 2:00 p.m. in Room 230 at the Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155, to formally adopt or reject the proposed amendments. If adopted, amendments become effective August 1, 2016, unless the Legislature by law provides otherwise.

B. Public Testimony

1. Dennis Flaherty, Executive Director, MN Police and Peace Officers Association

Mr. Flaherty spoke in opposition of the drug proposal, particularly changes to the sentencing of drug dealers. Mr. Flaherty stated that while they recognized the need for some of the other changes in the proposal, showing leniency to drug dealers

made no sense to the MN Police and Peace Officers Association, and it would be a direct threat to the safety of communities throughout Minnesota.

2. Arique Aguilar, Grassroots Organizer, Isaiah MN

Ms. Aguilar spoke on behalf of her cousin, and in favor of the drug proposal. She stated that we all agree that safe communities are the goal, but we disagree about how to get there. She spoke in favor of treating addiction as the health concern that it is in order to restore families and communities and prioritize treatment over prison.

3. Minister Toya Woodland, Minister, Christ Temple Apostolic Church; and Interim Organizer, Isaiah MN

Ms. Woodland is in favor of reducing sentences for non-violent drug offenders. She shared personal experiences that have led her to the conclusion that proper treatment of drug addiction is needed. Treatment for addiction would benefit families. Other community issues may attribute to drug problems and addictions. Resources should not go to expanding prisons, but to proper treatment.

4. Robert M. Small, Executive Director, MN County Attorney's Association

Mr. Small spoke in opposition of the drug proposal on behalf of the MN County Attorney's Association. He stated that the time is right for reform of drug laws, but reform should start with the Legislature and the Commission should respond accordingly to the legislative changes. There is a need to distinguish between non-violent offenders motivated by addiction or related circumstances and those engaged in violence, weapons, sale, or manufacturing. By doing this, public safety can be advanced. He also stated there needs to be focus on necessary funding at the local level for participation in drug courts, treatment, evaluations, supervision, and related services.

5. James Franklin, Representative of the MN Sheriffs' Association

Mr. Franklin spoke in opposition of the drug proposal on behalf of the MN Sheriffs' Association. He stated that a comprehensive approach needs to be taken and they do not agree with the public safety analysis. He stated that treatment is necessary, but the main concern with this proposal is related to the changes to first-degree drug offenses. He stated that this proposal will be problematic for local resources and that a legislative approach needs to be taken.

6. Lt. Jeff Wersal, MN River Valley Drug Task Force/Blue Earth County Sheriff's Office.

He stated there is concern in his area about methamphetamine use and the crimes associated with it, and does not believe this proposal will solve the issues. He stated that the business aspect of drugs is prevalent and that firearms are tied to drug offenses. Communities would rather have them in prison than in their neighborhoods and that prison provides a certainty that high level drug dealers will not be causing harm in the community. Drug dealers need to be held accountable.

7. Pastor Paul Slack, Isaiah MN

Pastor Paul Slack is in favor of the drug proposal. He stated that adding prisons is taking the matter in the wrong direction and that mass incarceration disproportionately affects those of color. Severely harsh sentencing policies are unjust and ineffective, and drug policies have been oppressive.

8. Dr. Amy Levad, Associate Professor of Moral Theology, University of St. Thomas

Dr. Levad is in favor of the drug proposal. She stated that prison cannot solve the problems of crime and addiction and we have better options for safe, strong communities. Society should not be dependent on prisons. She supports the proposed changes, but encourages the state to go beyond these steps.

9. Dr. Keith A. Roberts, Isaiah MN

Dr. Keith Roberts is a retired professor of sociology and is in favor of the drug proposal. He stated that increasing penalties have been counter-productive and has led to systemic racism and other social concerns. When punishments are overly severe they sometimes result in a rise of that crime. Severe punishment is not a powerful deterrent. Departure rates are showing a flaw in the system.

10. Detective Charles T. Strack, Board Member of MN State Association of Narcotics Investigators

Det. Strack spoke in opposition to the drug proposal. He stated that he recognizes that addicts need help and that help needs to be increased. The majority of citizens do not use or sell drugs and they need to be protected. Persons that sell or possess large quantities need to be in prison. He provided a typical drug sale scenario.

11. Randy Anderson, RS Eden/Eden House

Mr. Anderson is in long-term recovery from addiction and spoke in favor of the drug proposal. He shared his personal experiences. Draconian drug sentencing guidelines destroy lives and are unnecessary for deterrence to be effective. He stated that he never committed a crime other than a drug crime, and it is treatment that helped him, not prison. Deterrence can be done in a short period of incarceration time and that addiction cannot be locked up or incarcerated.

12. Gina Evans, MN Adult and Teen Challenge

Ms. Evans spoke in favor of the drug proposal. She stated that prison negatively influenced her criminal behavior. In prison, she learned how to commit other crimes. She is concerned that children of addicts end up in the foster care system. Addiction should be treated as a behavioral health issue.

13. Cassondra Wingard, MN Adult and Teen Challenge

Ms. Wingard spoke in favor of the drug proposal and shared her personal experience. She stated that she has had positive results from participating in Teen Challenge and encourages treatment. Prison is not conducive to a positive life.

14. Teresa Hanson, MN Adult and Teen Challenge

Ms. Hanson spoke in favor of the drug proposal and shared her personal experience. She stated that she has had positive results from participating in Teen Challenge.

15. Ryan Christian Else, MN Criminal Defense Lawyers

Mr. Else spoke in favor of the drug proposal, but encouraged the Commission to go further with its changes. He shared his experiences with the cases he has encountered. He stated that a judge can give an aggravated departure if necessary and weapon laws are in place if a weapon is involved, which will result in a more severe penalty when justified.

16. Sandra McAnany, Citizen

Ms. McAnany spoke in favor of the drug proposal and shared her personal experience. She is the mother of a drug addict who is in recovery. Her child received treatment instead of prison. Her child has recovered and her child's family is together because of it.

17. Dr. Chris Sigurdson, Retired Chief of Psychiatry at Federal Medical Center in Rochester, MN

Dr. Sigurdson spoke in favor of the drug proposal and shared what she witnessed as Chief of Psychiatry at the Federal Medical Center in Rochester, MN. She has worked with mentally ill and addicted persons. She stated that addressing the issue with mass incarceration is a huge mistake. Harsh sentences do not deter drug abuse. Drug policies put excessive burdens on our incarceration system.

18. Don Dewey, Area Director, Prison Fellowship MN

Mr. Dewey spoke in favor of the drug proposal on behalf of the Prison Fellowship of MN. He stated that this is a complex issue and considers the MN Department of Corrections as a leader in many areas. MN DOC is ill-equipped to treat the numerous persons with addiction. Diversion from prison is a positive direction.

19. Dr. Deborah Moses, Private Citizen; and Member, Jewish Community Action

Dr. Moses spoke as a private citizen, member of Jewish Community Action and a St. Paul resident. Dr. Moses is past director of Community Addiction Recovery Enterprise (C.A.R.E) which is the addiction treatment program operated by the State of Minnesota. Dr. Moses supported the drug proposal and believed it to be a good first step. She stated that Substance Use Disorder is a recognized and treatable mental health disorder that has been criminalized in the United States for years rather than funded through proven treatment methods.

20. Aaron Berc, Private Citizen; and Member, Jewish Community Action

Mr. Berc spoke as a concerned citizen, member of Jewish Community Action and a Minneapolis resident. Mr. Berc supports the drug reform stating that it is the tradition of the Jewish people to speak out against injustices. Mr. Berc stated that drug sentences in Minnesota are some of the longest in the country and the threshold amounts are irresponsibly low and that the punishment does not fit the crime.

21. Mike Kuhne, Volunteer, Jewish Community Action; and Social Justice Committee Chair, Mount Zion Temple

Mr. Kuhne spoke in support of the recommended sentencing guidelines reforms. Mr. Kuhne said that Jewish Community Action (JCA) organized the Twin Cities Jewish Community this past summer and met to discuss economic injustices and set criminal justice reform as its top priority because of the economic effects it has on families of incarcerated people many of whom are people of color. Mr. Kuhne stated

that, according to Bureau of Institute of Justice Statistics, it costs over \$40,000, annually, to imprison someone in Minnesota. He questioned what would happen if some of that money was reinvested and diverted to help minor offenders. JCA welcomes the Commission's modest sentencing guidelines reforms.

22. Jeff Morris, Brown, Lyon, Redwood Counties (BLR) Drug Task Force

Mr. Morris thanks the Commission for the opportunity to speak against the proposed changes. He said that he didn't disagree and that both sides had a valid point. He stated that most people who commit third- through fifth-degree controlled substance offenses need treatment because most truly are addicts. However, this is not the correct answer for first- and second-degree controlled substance offenses at this time. He stated that his area (which borders South Dakota) has seen an increase in meth and heroin cases. He gave an example of a case with 10 lbs. delivery that was intercepted and examples of crimes that involved drug delivery and a murder for hire plot. He stated that the issue should be revisited when there is more time and when a solution can be arrived at in which everyone can agree. He said that treatment should be made available for people who need it, but there also needs to be punitive measures.

23. Chief Darwin Melin, Chief of Police, Lower Sioux Indian Community

Chief Melin wanted to thank the Commission and share some of his concerns about the proposal. He stated that he believes that one of the primary responsibilities is the well-being of his community and to restore families and to take care of people who are addicted and to make sure people have the opportunity to become full-functioning members of society. However, he deviates when it comes to violent and predatory entrepreneurial offenders who are convicted of first- and second-degree controlled substance offenses and who are preying on his community. Chief Melin believes that there is room for treatment but not for people who are violent and predatory. Those people must be held to the harshest penalties in law. He hopes, as this moves forward, that more time is taken to evaluate the complete impact that the proposal has on minority and Native communities.

24. Robert Larsen, Chairman President, Lower Sioux Indian Community

Mr. Larsen opposed the proposed changes. Mr. Larsen stated that community leaders have taken the stance that they want the drug problem gone. Mr. Larsen spoke from personal experience about addiction and knows first-hand about consequences and actions. Mr. Larsen stated that treatment is a better option than prison, but that part of the responsibility is on the individuals who are selling drugs. He stated that it is not an innocent choice: it is "selling death." If the proposed

changes went through, there would be less fear among drug-sellers. The bottom line is that selling drugs is illegal.

25. Joshua Esmay, Director of Public Policy and Advocacy, Council on Crime and Justice; and Co-Chair of the Second Chance Coalition

Mr. Esmay spoke in favor of the proposal. He indicated that he submitted written comments asking that the Commission take a closer look at some of the aggravating factors to make sure that they are not so broad that they can apply to the vast majority of cases including cases that are motivated by drug addiction. He also asked the Commission to follow through with making recommendations to the Legislature including putting an end to mandatory minimums. Mr. Esmay countered some of the arguments against passing the proposal including that passing the amendment would have a negative effect on public safety. Mr. Esmay opined that argument would assume that the status quo is working and there is no evidence to support that claim.

26. Agent Robert Hillesheim, Brown, Lyon, Redwood Counties (BLR) Drug Task Force

Agent Hillesheim has been in law enforcement for 13 years, working in narcotics for three years. Agent Hillesheim opposed the Commission's proposal. He stated he opposed lowering the sentences for high-level violent drug dealers. He said that, to say that violence is not involved in drug offenses is ridiculous. He stated where there is crime there are narcotics. He also said that changing the guidelines would reward drug dealers who are motivated by the money.

27. Rev. Grant Stevensen, Isaiah MN

Rev. Stevensen spoke in support of the amendments. Rev. Stevensen gave an example of a case of a person who was incarcerated for second-degree murder in 1963. Rev. Stevensen stated that this offender was released from prison after seven years, but before release was given treatment and there was an emphasis on rehabilitation. Rev. Stevensen stated that this person went on to earn a college degree and went to medical school and is a medical researcher who has contributed greatly to the State of Minnesota. Rev. Stevensen stated it may be a good time for introspection when American Indians are incarcerated in Minnesota at a rate of 12:1 and black Minnesotans are incarcerated at a rate of 10:1.

28. Larry Moloney, Isaiah MN

Mr. Moloney spoke in support of the proposal. He thanked the Commission for exercising leadership. Mr. Moloney is a member of Isaiah and one of the leaders of

the team working on Criminal Justice Reform. Mr. Moloney represented indigent clients when he worked as a legal aid attorney. Mr. Moloney testified about the impacts of the criminal justice system on his clients and their families. He also submitted an article on recidivism that he suggested the Commissioners read.

29. Queen Kimmons, Executive Director, One Family, Once Community: The Poor People's Campaign, MN

Ms. Kimmons spoke in support of the proposal. Ms. Kimmons has over 20 years' of recovery and works with women who are in recovery. Ms. Kimmons is a college graduate and has a Master's Degree in Non-Profit Organizations. She is also a member of Families against Mandatory Minimums and she is a former inmate. Ms. Kimmons spoke how equity was not a buzz word in the United States Constitution but is placed there for all people to be treated fairly and justly. Ms. Kimmons stated that the word "felony" holds too much weight, and to ask that the Commission to reform sentences that hold non-violent offenders for more than five years. Ms. Kimmons stated that holding people for more than five years put them at more of a disadvantage for jobs, housing and reintegrating into society. Ms. Kimmons also asked the Commission to have some diversity with people of color, particularly African Americans, and ex-offenders.

30. Rep. Brian Johnson, MN House of Representatives

Rep. Johnson decided to speak because members of his constituency expressed concerns about the proposal to him. Rep. Johnson stated that he had sympathy for a lot of the people who had testified earlier but that they had a misunderstanding about what the Commission's proposal would do. He stated that the proposal would not help the people convicted of third- through fifth-degree offenses affecting their lives. He stated that the Commission's proposal would give drug-sellers who are victimizing people the easy path. Rep. Johnson asked the Commission to think about what they were doing and how they were doing it because it was a big concern for a lot of people in the State of Minnesota. Rep. Johnson supported the idea of getting help for third- through fifth-degree offenders and putting drug sellers behind bars where they belonged.

31. Amity Foster, IsaishMN.org; and Justice 4 All (J4A)

Ms. Foster wanted to thank the Commission for its work on the proposal. Ms. Foster spoke about her family's experience with chemical dependency and the value of sending people to treatment. Ms. Foster stated that Minnesota should lead its criminal justice system with restorative justice. Ms. Foster stated that she spoke to

an inmate in Lino Lakes prison named Kevin Reese who wanted to convey his personal experience to the Commission that prison does not heal people.

32. Brett Frayseth, Member, Jewish Community Action

Mr. Frayseth stated that he is a public school teacher and a resident of Minneapolis. Mr. Frayseth wished to discuss the effects of incarceration on education. Mr. Frayseth said that parent involvement was necessary for quality education to take place and that was not possible if parents were not present. Mr. Frayseth said that he had concerns that drugs needed to be kept out of schools, but he did not think locking people up for long periods of time was the answer. He thanked the Commission for its proposal and said it was a first step towards a better answer.

33. Suzula Bidon, Board Member, MN Recovery Connection; MN Association of Criminal Defense Lawyers; MN Lawyers Concerned for Lawyers

Ms. Bidon thanked the Commission and wanted to disabuse the Commission of one notion: that there was a black and white distinction between drug users and drug sellers. Ms. Bidon stated that buying and selling small amounts of drugs was part and parcel of being a drug addict. Ms. Bidon stated that she was convicted of a federal felony conspiracy drug offense for which the federal sentencing guidelines called for 10 years in prison. Ms. Bidon stated that she used the “safety valve” to bring her sentence down and that her judge was “sympathetic and wise” and gave her a downward departure. If she had received the mandatory minimum, she would still be in prison today. Instead, she has gone to law school, put in thousands of hours, and helped hundreds of people recover from addiction and she would like to see that opportunity extended to other people with this very serious and treatable disease.

The Chair called upon anyone else present who wished to speak. No one else wished to speak.

C. Adjournment

The Chair adjourned the public hearing at 4:21 p.m. without objection.