

Minnesota Sentencing Guidelines Commission

Staff Response to Phone Inquiries Regarding *State v. Kirby* September 14, 2017

The Commission asked the Chair and the Executive Director to draft a statement regarding how the Commission should respond to phone inquiries regarding *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017). They drafted the following statement, which was put on the MSGC web site August 3, 2017:

Sentences After *State v. Kirby*

On July 26, 2017, in [State v. Kirby](#), the Minnesota Supreme Court held that the amelioration doctrine required the resentencing of a person whose conviction was not yet final on May 23, 2016—the effective date of section 18 of the Drug Sentencing Reform Act (2016 Minn. Laws ch. 160)—in a case in which the Drug Offender Grid, as established under that section, reduced the offender’s presumptive sentencing range from that of the sentencing grid in effect at the time of the offense. (A second case decided the same day, [State v. Otto](#), held that the amelioration doctrine did not apply to the Drug Sentencing Reform Act’s controlled substance weight threshold changes.) When the sentencing judge determines that the 2016 Drug Offender Grid applies under *Kirby* to sentence, or resentence, certain first- or second-degree drug offenses, even though the offenses occurred before August 1, 2016, it will be necessary to prepare the sentencing worksheet using the “Override” button. Also, please make a note in the worksheet comments such as “Sentencing judge applied the Drug Offender Grid because of *State v. Kirby*,” “Sentencing judge found that the amelioration doctrine required use of the Drug Offender Grid,” or similar language. These comments will allow MSGC staff to code these cases properly pending receipt of formal guidance by the Sentencing Guidelines Commission.

Currently, staff responds to telephone inquiries regarding *Kirby* using the language of this notice.

Staff proposes to change the text of the *Kirby* announcement simply to read, after the headline, “For information about preparing sentencing worksheets affected by *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017), please visit our [Guidelines Assistance page on that topic](#).”

That link would pass the user to a web page, organized under the “Drug Modifications 2016” topic of the “Guidelines Assistance” section of the MSGC web site, that would contain the “Sentences After *State v. Kirby*” statement.