

Date: November 5, 2019

To: Mr. Nate Reitz, Executive Director - Minnesota Sentencing Guidelines Commission

From: Commissioner Paul Schell
Minnesota Sentencing Guidelines Commission/Minnesota Department of Corrections

CC: Chair Kelly Mitchell, Minnesota Sentencing Guidelines Commission
Commissioners – Minnesota Sentencing Guidelines Commission

Re: Proposed Guidelines Modification to Limit Probation Terms

Background

Since Chair Mitchell presented probation term data at the last meeting, I have spoken with a variety of people from the community and system stakeholders, which provided meaningful context around probation terms. As a result, I am concerned that a failure to consider the rationality, proportionality, and uniformity of probation terms is contrary to the legislative direction provided in M.S. 244.09. That statute provides that “sentencing pursuant to the Sentencing Guidelines is . . . a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability,” and also authorizes the MSGC to “establish appropriate sanctions for offenders for whom imprisonment is not proper,” including with respect to “probation and the conditions thereof.” Based on community and stakeholder input, review of the function and role of the Minnesota Sentencing Guidelines Commission, and consideration of the probation term summary data provided to members by Chair Mitchell, I submit the observations, conclusions, and proposal noted below.

Observations

- Probation terms vary widely across the state – in the 4th and 6th judicial districts the average probation term is 3.3 years, whereas in the 3rd and 7th districts they are 7.1 and 7.4 years, respectively.
- Because the majority of probation revocations occur in the first 24 months and profoundly diminish at 60 months and beyond, there are no compelling reasons in most cases to impose probation terms beyond that period.

Conclusions

- It is a duty of the Sentencing Guidelines Commission to ensure “uniformity, proportionality, rationality, and predictability” in sentencing throughout Minnesota.
- Probation term consistency is one small step toward addressing both the racial and geographic disparities that exist in Minnesota’s criminal justice system. A defendant’s zip code (judicial district) should not serve as the basis for variation in the term of probation, which most impacts people in greater Minnesota.

- A lack of MSGC guidance and direction maintains a system that continues to adversely impact some people more than others based on geography.
- Acting now is important because it would not only create a more consistent probation system but would also minimize voter disenfranchisement, as lesser probation terms for some people would result in the earlier restoration of their voting rights without negatively impacting public safety.

Proposal

To limit the length of time that certain felony offenders may be placed on probation, I propose that the Commission adopt the following Guidelines modifications to become effective on August 1, 2020, and apply to crimes committed on or after that date:

[Section 2.]C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B. above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence. Section 3.A governs conditions of stayed sentences.

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. The length of the stay may exceed the duration of the presumptive prison sentence, subject to section 3.A.2.
2. Durations of Stayed Sentences. When the court stays execution or imposition of sentence for a felony offense, the length of the stay must not exceed five years or the statutory maximum term of probation, whichever is less. This limitation on the length of probation does not apply to convictions for felony homicide or sex offenses in violation of Minn. Stat. §§ 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.2662 (second-degree murder of an unborn child), 609.2663 (third-degree murder of an unborn child), 609.2664 (first-degree manslaughter of an unborn child), 609.268 (injury or

death of an unborn child during the commission of a crime), 609.342 (first-degree criminal sexual conduct), 609.343 (second-degree criminal sexual conduct), 609.344 (third-degree criminal sexual conduct), 609.345 (fourth-degree criminal sexual conduct), or 609.3451 (fifth-degree criminal sexual conduct). Extensions of probation are governed by statute (see Minn. Stat. § 609.135, subd. 2(g)–(h)).

23. Other Conditions of Stayed Sentences. While the Commission has otherwise 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:

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- (6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.