

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**November 6, 2014**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on November 6, 2014 at the Minnesota Judicial Center; 25 Rev. Dr. Martin Luther King Jr. Blvd.; St. Paul, MN 55155; Room G-31. Commission members present were Chair Jeffrey Edblad, Jason Anderson, Vice-Chair Justice Christopher Dietzen, Sergeant Paul Ford, Judge Carrie Lennon, Cathryn Middlebrook, Department of Corrections Commissioner Tom Roy, Judge Heidi Schellhas, and Yamy Vang. MSGC staff members present were Executive Director Nate Reitz, and research staff Anne Wall and Jill Payne. Jim Early from the Attorney General's Office was also present. Members of the public were Patrick Courtney, Records and Sentence Administration Program Manager, Minnesota Department of Corrections; Lauren Durand and Isabella Nascimento, Legal Rights Center; Lillia Newsomand, Student; and Dylan Warkentin, Minnesota Association of Community Corrections Act Counties.

**1. Call to Order**

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

**2. Approval of Agenda**

The Chair explained that the agenda item related to Interactive TV (Agenda Item #5) would be removed because the ITV equipment was not available in the remote location.

**Motion** to approve the meeting agenda was made by Justice Christopher Dietzen and seconded by Jason Anderson.

**Motion carried.**

**3. Approval of Meeting Minutes from October 16, 2014**

The Chair asked for additions, deletions or corrections to the meeting minutes. Executive Director Reitz said that Cathryn Middlebrook had contacted staff earlier in the day to make a correction to section 3 related to her introduction as a new member. The minutes gave the impression that she had more years of experience than she had. The error was corrected and the Commission reviewed the "corrected" draft minutes.

**Motion** to approve the meeting minutes was made by Commissioner of Corrections Tom Roy and seconded by Yamy Vang.

**Discussion:** Judge Heidi Schellhas stated that she would like the minutes corrected in section 6.A to reflect the name of the other Commission member, Cathryn Middlebrook, and to reflect that it was her opinion, not necessarily fact. Director Reitz asked if members wished to always be identified by name in future meeting minutes. Members had no objection. The minutes were corrected, as follows:

*The Chair recognized Commission member Judge Schellhas who had questions concerning the timing of the Commissioner's discussion while there were cases before the Minnesota Court of Appeals and the Minnesota Supreme Court. ~~It was clarified~~ Cathryn Middlebrook opined that the cases before the Minnesota appellate courts were related to conditional release and not supervised release.*

**Amended Motion** to approve the meeting minutes was made by Commissioner of Corrections Tom Roy and seconded by Yamy Vang.

**Motion carried.**

**Justice Dietzen abstained stating that he was not in attendance at the October 16, 2014, meeting.**

#### **4. Preview Draft Report to the Legislature and Discuss Remaining 2014 Work Plan**

Director Reitz pointed members to the draft report's table of contents and executive summary and explained that the annual Report to the Legislature was due on January 15, 2015. He explained that the Commission's report contained two requirements: 1) modifications to the Guidelines in 2014; and 2) a report on the use of firearms in crimes as reported by Minnesota's County Attorneys.

Director Reitz went on to say that it was also an opportunity for the Commission to address topics of interest or concern and to make recommendations to the Legislature. As part of that, Mr. Reitz explained that the Commission may address recent court decisions that affect sentencing issues.

In one, *State v. Soto*, \_\_N.W.2d\_\_ (Minn. 2014), it was held that the defendant's mitigated departure was not justified because he was not "particularly" amenable to probation. In another ruling, *State v. Ali*, \_\_N.W.2d\_\_ (Minn. 2014), it was held that the imposition of a juvenile life with the possibility of release sentence did not violate the U.S. Supreme Court ruling that mandatory life without parole was unconstitutional (*Miller v. Alabama*, 132 U.S. 2455 (2012)) nor did it violate the Minnesota Constitution, article. 1, section 5. The consensus of the Commission was that it would like these issues summarized for inclusion in the draft report for its review.

Director Reitz showed members a letter in their packets to him from Representative Debra Hilstrom, dated October 16, 2014. Rep. Hilstrom had five questions: 1) What have been the racial demographics of the prison population from 2004 to today? 2) Of this population, what are the racial demographics of who is receiving a departure from sentencing guidelines? 3) What crimes are most likely to receive departures? 4) Of these departures, what data do you have regarding whether the departures are a result of defendants participating in specialty courts? 5) Please provide recommendations, if any, that the Commission had regarding how the Legislature can aid its work in conjunction with specialty court across Minnesota, whether

through the provision of resources or a change in policy. Director Reitz explained that staff had answered questions one through four, but wanted direction from the Commission on question five.

Members discussed how they wanted the Director to respond considering that Rep. Hilstrom was the outgoing Chair of the Committee on Judiciary Finance and Policy. There was consensus that the Director should determine who the new chair will be and contact that person and ask how to proceed. This item will be discussed again early next year.

The Commission's November 20, 2014 meeting will focus on reviewing the entire draft 2015 Report to the Legislature, and the Commission must adopt the report at its December 18, 2015 meeting.

## 5. Consecutive Sentencing Policy

The consecutive sentencing policy item has come before the Commission in January, March, and October of 2014 because there are inconsistencies between Guidelines section 2.F related to consecutive sentences and the administration of the supervised release period for executed consecutive sentences. Currently, Department of Corrections' (DOC) practice for implementing the term of supervised release in consecutive sentences differs from the policy in Minn. Sentencing Guidelines comment 2.F.02; this results in the supervised release period of consecutive sentences not being uniformly administered. At its March 20, 2014 meeting, staff suggested that it bring back alternate proposals to address the problems; information on cost of supervision and bed impacts was requested. The Commission reviewed three proposals at its October 2014 meeting, but did not select a proposal. At that time, the Commission was reluctant to publicly release only one proposal without further discussion, particularly in the absence of its regular Chair and two other members.

Justice Dietzen stated that he must recuse himself from the discussion because of specific cases pending before the Minnesota Supreme Court. The Chair stated that his preference was to have all members involved in the decision-making process. He stated that he was concerned that the Commission was already missing one member because the victim member had not yet been appointed by the Governor, and that there were two other members of the Commission, Cathryn Middlebrook, who was a named party to one of the cases, and Commissioner of Corrections Tom Roy, who's department had filed an Amicus brief in the same case.

The Chair stated that, although clarifying the Guidelines' policy on consecutive sentencing was an important issue, it was more important to be transparent as a policy-making body.

**Motion** to proceed with the consecutive sentencing agenda item as an educational item without consideration of action was made by Commissioner of Corrections Tom Roy and seconded by Yamy Vang.

**Discussion:** Jason Anderson said that it was important for everyone to be involved in the discussion because everyone comes to the table with a different perspective.

Judge Carrie Lennon did not disagree, but was uncomfortable with delaying a decision because of the fact that district court judges do not have the information they need to pronounce an executed consecutive sentence.

**Motion carried.**

**Justice Dietzen abstained and left the meeting.**

Director Reitz presented educational information that revisited the three proposals. Proposal 1 would make the current DOC practice explicit in the Guidelines. The terms of imprisonment would be added together, but the supervised release portion of the first sentence would overlap with the term of imprisonment on the second sentence. As a result of the overlap, the offender would serve the first supervised release term, or at least part of it, in prison.

Judge Schellhas passed out copies of the DOC's administrative rules and said that the problem with Proposal 1 was that a person cannot serve supervised release time in prison because it is a violation of the DOC's rules under Minn. Rules [2940.0100, subp. 31](#), stating, "Supervised release' means that portion of a determinate sentence served by an inmate in the community under supervision and subject to prescribed rules, adopted in accordance with Minnesota Statutes, section [244.05](#)."

Commissioner or Corrections Roy stated that he recognized the incongruity of the problem.

Proposal 2 would move the comment that described how to aggregate consecutive sentences into the Guidelines. That is, that the executed sentences were added together and "aggregated" and the two-thirds term of imprisonment and one-third term of supervised release would be determined from the total time. Under this proposal, the offender would serve more time on supervised release than under Proposal 1.

Proposal 3 would compromise between Proposal 1 and Proposal 2 in which terms of imprisonment would be served consecutively and the supervised release terms would be served concurrently, and the offender would serve the longest supervised release term.

Mr. Reitz explained that there would be questions of the timing of the supervised release with either Proposal 2 or Proposal 3 if the first sentence and the consecutive sentence were not executed by the same judge on the same day. According to 2012 MSGC Monitoring Data, in roughly 75 percent of the cases, consecutive sentences were pronounced before the same judge on the same day.

Two questions remained in the other 25 percent of the cases: 1) Once Judge #1 pronounces an executed sentence, can Judge #2 later alter that sentence by decreeing that supervised release term #1 doesn't begin until after term of imprisonment #2 is complete? and 2) How can two terms of imprisonment (and supervised released terms) be "aggregated" if separated in time by intervening supervised release?

Judge Schellhas asked Patrick Courtney from DOC Records and Sentence Administration how often a consecutive sentence pronounced by Judge #2 was “aggregated” according to the DOC method in which the entire sentence was aggregated: both the terms of imprisonment and terms of supervised release. Mr. Courtney said that did not happen.

Director Reitz explained that the Commission could choose not to address the timing issue, but it would leave the Courts and the DOC to determine what to do in unusual circumstances. Mr. Reitz offered two timing options:

1. Timing Alternative 1, which would aggregate consecutive sentences only if both were executed by the same judge on the same day; otherwise, current DOC practice (“Standard” under Proposal 1) would apply. Mr. Reitz directed the Commission to proposed language highlighted in gray and said that this would address 75 percent of the consecutive cases.
2. Timing Alternative 2, which would employ current DOC practice (“Standard” under Proposal 1) when the offender had already begun serving supervised release on the first offense when the second sentence was executed. Mr. Reitz directed the Commission to proposed language highlighted in green and said that this would address 99 percent of the consecutive cases.

Judge Schellhas stated that she would support one of the timing alternatives if the Guidelines language reflected that all supervised release time served in prison was “deemed revoked.”

Director Reitz next explained that staff proposed several technical changes intended to clarify current policy, but are not new policy. Staff also proposed one policy change to eliminate presumptive consecutive sentencing for people who are on supervised release.

Director Reitz explained that current policy provides that consecutive sentences are presumptive, unless a concurrent sentence would result in a longer sentence. Because offenders on supervised release will always have a Criminal History Score of at least 1 (for the custody-status point), and likely higher, a concurrent sentence will always be equal to or longer than a consecutive sentence (which only employs a Criminal History Score of 1 in the presumptive-consecutive scheme); absent the consideration of possible DOC action regarding supervised release revocation.

Director Reitz said, since the court does not know what the DOC will do, it was impossible to determine whether a concurrent or consecutive sentence would be longer. Because the concurrent grid-time will always be equal to or longer than the consecutive grid-time, very few offenders who commit offenses on supervised release actually receive a consecutive sentence.

It was explained that the court may still impose a consecutive sentence if the offense qualifies under the permissible consecutive rules i.e., presumptive consecutive offense and on the list of qualifying offenses in the Guidelines.

Director Reitz concluded his presentation and the Chair asked if there were further questions.

Staff explained that if the Commission determined that the proposed changes to the Guidelines would reduce sentence lengths, then both a public hearing was required and legislative review. The changes to the consecutive sentencing policies could go to a public hearing in July 2015, at the annual public hearing, then be reviewed by the legislature in 2016, and become effective August 1, 2016.

Commissioner of Corrections Roy considered what could be done in the meantime to change current practices.

Judge Lennon reiterated that there was an opportunity to educate judges on the two different administrations of a consecutive sentence based on what is said in the sentencing order. It was important for judges to know the difference and understand the basics.

## 6. Public Input

The Chair recognized the members of the public and asked if they wished to speak.

Patrick Courtney thanked the Commission and said that if the Commission moves forward with Proposal 2 or Proposal 3, it would be very helpful to also adopt one of the timing proposals so that the DOC would know how to administer the consecutive sentence.

Lauren Durand, Isabella Nascimento, and Lillia Newsomand thanked the Commission and said that the meeting was informative.

Dylan Warkentin from the Minnesota Association of Community Corrections Act Counties said that he was proud of the work that the Commission presented. He asked if it would be a possible interim remedy to alter the language read by a judge at sentencing to address the alternative forms of administering a consecutive sentence. Mr. Warkentin stated that this issue was very important because it dealt with public safety and very short supervised release terms were insufficient for reentry plans. He stated that his organization would support Proposal 3.

## 7. Adjournment

**Motion** to adjourn was made by Yamy Vang and seconded by Sergeant Paul Ford.

**Motion carried.**

The meeting adjourned at 4:05 p.m.