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**Report to the Legislature
from the
New Sentencing System Task Force**

February 15, 1993

*Pursuant to 1992 Laws, Chapter 571,
Article 2, Section 11, Subd 3*

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I. INTRODUCTION

The 1992 legislature created a new system for sentencing offenders who are convicted of felony level offenses and who receive executed prison sentences. The new sentencing system, which eliminates good time, was passed as part of the 1992 crime bill. Under the new system, inmates will no longer earn and vest good time. Instead, the legislation authorizes the Commissioner of Corrections to impose disciplinary confinement time for violations of disciplinary rules.

Offenders who are committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, will receive a sentence consisting of two parts: a term of imprisonment equal to two-thirds of the pronounced executed sentence; and a term of supervised release equal to the remaining one-third of the executed sentence. The court is required to explain the amount of time to be served in prison and the amount of time to be served on supervised release.

The legislature established a task force to study the new sentencing provisions and to recommend changes to legislation and to the Sentencing Guidelines to permit the effective implementation of the new system (1992 Session Laws, Ch. 571, Art. 2, Sec. 11). The criminal justice system in Minnesota operates under a variety of complex policies and rules, including Minnesota Statutes, Minnesota Rules of Criminal Procedure, case law, and the Minnesota Sentencing Guidelines. The task force focused on how best to implement the new sentencing legislation within the context of an already complex system.

Legislative Directive

The legislature directed the task force to:

- (1) determine whether the current sentencing guidelines and sentencing guidelines grid need to be changed in order to implement the new sentencing provision; and
- (2) determine whether any legislative changes to the provisions are needed to permit their effective implementation

Task Force Membership

The legislation specified that the task force consist of the following or their designee: the chair of the Sentencing Guidelines Commission; the Commissioner of Corrections; the State Court Administrator; the chair of the House Judiciary Committee; and the chair of the Senate Judiciary Committee. In addition, the task force benefitted from the contributions of two district court judges and two probation officers. The appendix includes a list of task force members and a list of other interested parties who participated and assisted the task force and who were kept informed of the task force's work.

Debra Dailey, Executive Director of the Sentencing Guidelines Commission, served as chair of the task force. The task force began meeting in July of 1992. Summaries of the meetings and copies of the materials discussed are available by contacting the chair.

General Recommendations

The legislature directed the task force to report back to the legislature by February 15, 1993. This report contains the recommendations of the task force and a summary of the issues and concerns they discussed.

The new sentencing legislation requires that the Commissioner of Corrections modify existing rules to specify disciplinary offenses which may result in the imposition of a specific disciplinary confinement period. Section II of this report includes a summary of the development of these policies.

The task force focused its deliberations on issues surrounding the definition and pronouncement of the sentence. Currently, the Department of Corrections uses a very precise automated formula for calculating release dates. Concerns were raised about requiring the courts to calculate the term of imprisonment with the same degree of precision.

The task force recommends that the statutory language creating the new sentencing system be amended to clarify that every executed felony sentence now consist of two parts, by operation of law. When pronouncing an executed sentence, the judge will pronounce the entire sentence, and explain that the "executed sentence" includes the "term of imprisonment" and the "supervised release" term. This change addresses concerns regarding litigation that could arise from incomplete or incorrect expressions of the components of the sentence.

The task force recommends that the Sentencing Guidelines Commission amend the guidelines to:
1) Include a grid or table showing how executed sentences are broken down into a term of imprisonment and a period of supervised release; and 2) Make the terminology used in the guidelines consistent with the language of the new sentencing provisions. These modifications will aid in the training of criminal justice professionals and in the implementation of the new system. The changes will also promote truth in sentencing by showing how executed sentences consist of both a term of imprisonment and a period of supervised release.

The task force recommends that the provisions relating to minimum periods of supervision for sex offenders be amended so that the language, terminology and definitions are consistent with the language used in the patterned sex offender provision. During the task force's deliberations, questions were raised regarding how the minimum periods of supervision for sex offenders, which were enacted in 1992, would work in the context of the new system. A discussion of this issue is included in Section III.

II. RECOMMENDATIONS

CONVERSION TO 'DISCIPLINARY CONFINEMENT TIME'

A primary effect of the new sentencing system is to eliminate the earning and vesting of good time by inmates serving executed sentences. Under the new system, the Commissioner is authorized to impose disciplinary confinement time for violations of disciplinary rules.

The legislation requires that by August 1, 1993, the Commissioner of Corrections:

"..modify existing disciplinary rules to specify disciplinary offenses which may result in the imposition of a disciplinary confinement period and the length of the disciplinary confinement period for each disciplinary offense. These disciplinary offense rules may cover violation of institution rules, refusal to work, refusal to participate in treatment or other rehabilitative programs, and other matters determined by the commissioner."

The Commissioner of Corrections has established a Disciplinary Confinement Committee for the purpose of reviewing policies regarding the imposition of disciplinary confinement as well as disciplinary time without confinement. More specifically, this committee is reviewing disciplinary procedures in the context of moving from a system of good time to a system of disciplinary time. This committee is also developing policy regarding the imposition of disciplinary sanctions when an inmate refuses to participate in treatment programs.

Although this committee is still in the process of finalizing its recommendations, it appears clear at this time that the Department of Corrections will adapt to the new legislation and will not be requesting legislative changes related to disciplinary time.

LEGAL DEFINITION OF AN EXECUTED SENTENCE

Under the new sentencing system, an executed sentence actually consists of three parts: the overall executed sentence, the term of imprisonment, and the period of supervised release. In the original language passed by the legislature, the legal components of the sentence are dependent on the court pronouncing a minimum term of imprisonment and a maximum period of supervised release.

- **Minnesota Statutes should be amended to clarify that the legal definitions of the two components of an executed sentence are defined by law and are based on the total sentence pronounced by the court.**

Currently, when someone is committed to the Commissioner of Corrections, the judge pronounces the total length of the executed sentence. The Department of Corrections is very precise in the calculation of estimated release dates. The number of months in the sentence is multiplied by 30.4167 days to convert the sentence into days. The length of supervised release is computed by multiplying the sentence (in days) by .3333. The task force was concerned about the difficulty of requiring the court to pronounce the components of the sentence with that same degree of precision. The awkwardness of pronouncing the exact number of days was noted, as was the possibility of sentences being pronounced incorrectly (e.g., having the proportions for supervised release and term of imprisonment pronounced incorrectly; the court not pronouncing the total sentence, etc.). Errors would most likely occur when a sentence other than the presumptive duration was pronounced, e.g., departures, consecutive sentences, and sentences at the

upper or lower end of the guidelines range. Concerns were raised regarding the confusion that this could cause for the public, the offender and for the Department of Corrections.

Concerns were also raised about litigation that could arise from incomplete or incorrect explanations of the components of the sentence. Amending M.S. § 244.101 so that the legal definition of the components of an executed sentence would be controlled by law will reduce litigation that could otherwise arise if the components are expressed incorrectly or only the total sentence is pronounced.

If the legal definitions were to be based on the sentence pronounced by the court, information systems would need to be changed quickly in order to reflect the legal sentence. There could be considerable immediate costs associated with converting large criminal databases and information systems. Having the legal definition of the components defined by law will allow agencies to be more flexible in how information systems are changed, yet they will still be able to record and communicate the legal sentence.

- **Minnesota Statutes should be amended to clearly define "term of imprisonment" as two-thirds of the total "executed sentence" pronounced by the court and to define the period of "supervised release" as the remaining one-third.**

Without a set of clear definitions, the phrase "term of imprisonment" could cause confusion both in this state and in other jurisdictions; particularly in reference to what constitutes a felony level sentence. "Term of imprisonment" is used differently by different people and organizations.

Minnesota Statutes Chapter 244 should, therefore, be amended to define the "executed sentence" as the full period of commitment to the Commissioner of Corrections; the "term of imprisonment" as two-thirds of the total "executed sentence"; and "supervised release" as the remaining one-third.

The members of the task force tried to preserve existing meanings of "terms of art" to avoid undue confusion. However, it must be stressed that the new sentencing system requires that all those who are involved in the criminal justice system become aware of the very specific new definitions of sentencing terms.

EXPLANATION OF EXECUTED SENTENCES

The task force discussed ways to help ensure the accurate and uniform implementation of the new system.

- **The Sentencing Guidelines Commission should add a table to the guidelines that illustrates how executed sentences are broken down into a term of imprisonment and a period of supervised release.**

Although the legal definition of an executed sentence is based on the total period of commitment to the commissioner that is pronounced by the judge, emphasis will still be placed on having the court explain the components of the sentence. To ease implementation of the system it was agreed that a table showing how executed sentences are split into terms of imprisonment and periods of supervised release should be added to the Sentencing Guidelines. The addition of this table would assist criminal justice professionals in correctly explaining the sentence. (See example in appendix.)

- **The Sentencing Guidelines Commission should add a section to the guidelines which briefly describes the new sentencing system.**

Including a description and explanation of the new sentencing system and the components of executed sentences will serve as a means of informing and training criminal justice professionals. It will also help to inform the general public and the media.

- **The Criminal Justice Executive Policy Group should continue to work on the development of a uniform Criminal Judgment Form.**

The new legislation requires that the court's explanation of the components of an executed sentence be included in a written summary. There is currently no uniform, statewide form for recording sentences. The proposed language, therefore, allows for flexibility in how the different jurisdictions record sentences, but it also requires the courts to include the explanation of the sentence in a document that would be more easily and quickly accessible than the sentencing transcript.

The Criminal Justice Executive Policy Group has been working on the development of a criminal judgment form that could be used statewide. The task force encourages this group to incorporate the requirements of the new sentencing system into this form. Such a form could serve both as a summary of the sentence and as a training tool.

- **Training of criminal justice professionals will need to be undertaken to ensure the uniform and accurate implementation of the new sentencing system.**

Training is a critical element in ensuring the uniform and accurate implementation of a new policy. The courts and other criminal justice professionals will need to be trained in how executed sentences should be pronounced and explained under the new sentencing system.

Although each agency will be responsible for training its own personnel, the work of the task force and the changes suggested above should make implementation and training easier. The recommended changes to the guidelines will help alert all participants in the system that executed sentences now consists of two parts. A standardized sentencing form which incorporates the new sentencing system would also be an aid and an instructional tool for practitioners.

Efforts to educate the media and public on how the new system works are also necessary. The requirement that the court explain the sentence and record the explanation in a summary of the sentence should help to inform the media and the public about how the system works and what the sentence actually is in a given case.

TECHNICAL CHANGES

The task force discussed the need for changes in sentencing terminology as a result of the new sentencing system. As discussed above, "term of imprisonment" will now refer to the first two-thirds of the executed sentence pronounced by the court. "Supervised release" will refer to the remaining one-third of the sentence. The majority of the proposed technical amendments merely make terminology changes to the statutes and the guidelines so that the terminology used is consistent with the definitions that are part of the new sentencing system.

The task force conducted a computer search of Minnesota Statutes and the Minnesota Sentencing Guidelines for all of the critical sentencing terms: sentence, term of imprisonment, prison, good time, presumptive sentence, supervised release, conditional release, felony, confinement, and commitment. In doing so, it discovered that current use of the various terms is inconsistent: for example, "term of imprisonment" is sometimes used to refer to the entire sentence, and sometimes to refer to only the first two-thirds of the sentence, or the sentence minus good time. The technical changes help ensure that the use of the phrase "term of imprisonment" will be consistent with the definition of the term under the new sentencing system. Specific changes that will need to be made to the statutes and to the guidelines are included in the appendix.

Changes to Minnesota Statutes

The technical changes to Minnesota Statutes are designed to: 1) take into account the changes made to the felony sentencing system by the 1992 legislature; 2) take into account that the legal definitions of the two components of an executed sentence are controlled by law (See Section II of this report).

A number of amendments simply substitute "term of imprisonment" for some other phrase referring to the prison portion of the pronounced sentence.

Mandatory minimum sentencing provisions are amended to provide that they require that the defendant be "committed to the commissioner of corrections" for the specified minimum sentence. This follows the principle set forth in the 1992 law that the statutory mandatory minimum sentence should govern the entire sentence pronounced by the court.

The Minnesota Sentencing Guidelines

The guidelines should be amended so that the terminology used is consistent with the statutory language regarding the new sentencing system. For example, to facilitate the understanding of the new sentencing system, language should be added to the Sentencing Guideline's Grid to clarify that the durations in the grid represent the entire period of commitment to the Commissioner of Corrections and that an "executed sentence" is composed of a "term of imprisonment" and a period of "supervised release".

III. MINIMUM PERIODS OF SUPERVISED RELEASE FOR SEX OFFENDERS

The 1992 legislature enacted a provision requiring that all convicted sex offenders sentenced to prison receive at least a five year period of supervised release. All offenders convicted of a second or subsequent sex offense (and certain other serious sex offenders) who are sentenced to prison must receive a minimum of ten years of supervised release. This provision is effective for crimes committed on or after August 1, 1992. The provision is notwithstanding the statutory maximum sentence otherwise applicable to the offense or any provision of the sentencing guidelines.

- **The task force recommends that the provision dealing with mandatory periods of supervised release for sex offenders (M.S. § 609.346, subd. 5) be amended so that the language and terminology are consistent with the language used in the patterned sex offender provision (M.S. § 609.1352).**

These provisions are not directly part of the new sentencing system; however, the task force discussed how the minimum periods of supervised release for sex offenders would work in conjunction with the new sentencing system. In the course of its discussions, questions arose regarding how to best implement the new minimum periods of supervised release within the context of the new sentencing system.

The task force felt that the provision could be implemented more easily, and more uniformly, if the language were modeled after the patterned sex offender provision. The patterned sex offender provision allows the court to sentence certain types of offenders to extended terms of imprisonment and provides for the Commissioner of Corrections to place those offenders on conditional release when their term of imprisonment is completed. The patterned sex offender provision also clearly grants the Commissioner the authority to revoke conditional release and order that the offender serve the remaining portion of the conditional release term in prison.

The recommended changes to this provision help clarify that this special period of supervision for sex offenders runs concurrent to, but is different than, the period of supervised release associated with the length of the pronounced executed sentence. The changes would also clarify that the Commissioner of Corrections has authority over the offender for the full length of the special period of supervision and has the authority to revoke the conditional release and require that the offender serve the remaining period in prison. The specific statutory language that is being recommended is included in the appendix.

APPENDIX

**Example of Table Showing the Breakdown of Executed Sentences into
Term of Imprisonments and Supervised Release Periods
Length in Months**

In accordance with Minn. Stat. § 244.101, an executed sentence pronounced by the court consists of two parts: a term of imprisonment equal to two-thirds of the pronounced executed sentence and a supervised release term equal to the remaining one-third. The time actually served by an inmate is subject to the provisions of M.S. § 244.05, subd. 1a.

Presumptive Sentence	Term of Imprisonment	Supervised Release Period	Presumptive Sentence	Term of Imprisonment	Supervised Release Period
12 and 1 day	8 and 1 day	4	88	58 $\frac{2}{3}$	29 $\frac{1}{3}$
13	8 $\frac{2}{3}$	4 $\frac{1}{3}$	98	65 $\frac{1}{3}$	32 $\frac{2}{3}$
15	10	5	108	72	36
17	11 $\frac{1}{3}$	5 $\frac{2}{3}$	110	73 $\frac{1}{3}$	36 $\frac{2}{3}$
18	12	6	122	81 $\frac{1}{3}$	40 $\frac{2}{3}$
19	12 $\frac{2}{3}$	6 $\frac{1}{3}$	134	89 $\frac{1}{3}$	44 $\frac{2}{3}$
21	14	7	146	97 $\frac{1}{3}$	48 $\frac{2}{3}$
22	14 $\frac{2}{3}$	7 $\frac{1}{3}$	150	100	50
23	15 $\frac{1}{3}$	7 $\frac{2}{3}$	158	105 $\frac{2}{3}$	52 $\frac{2}{3}$
25	16 $\frac{2}{3}$	8 $\frac{1}{3}$	165	110	55
26	17 $\frac{1}{3}$	8 $\frac{2}{3}$	180	120	60
27	18	9	190	126 $\frac{2}{3}$	63 $\frac{1}{3}$
30	20	10	195	130	65
32	21 $\frac{1}{3}$	10 $\frac{2}{3}$	200	133 $\frac{1}{3}$	66 $\frac{2}{3}$
34	22 $\frac{2}{3}$	11 $\frac{1}{3}$	210	140	70
38	25 $\frac{1}{3}$	12 $\frac{2}{3}$	220	146 $\frac{2}{3}$	73 $\frac{1}{3}$
41	27 $\frac{1}{3}$	13 $\frac{2}{3}$	225	150	75
44	29 $\frac{1}{3}$	14 $\frac{2}{3}$	230	153 $\frac{1}{3}$	76 $\frac{2}{3}$
46	30 $\frac{2}{3}$	15 $\frac{1}{3}$	240	160	80
48	32	16	306	204	102
54	36	18	326	217 $\frac{1}{3}$	108 $\frac{2}{3}$
58	38 $\frac{2}{3}$	19 $\frac{1}{3}$	346	230 $\frac{2}{3}$	115 $\frac{1}{3}$
65	43 $\frac{1}{3}$	21 $\frac{2}{3}$	366	244	122
68	45 $\frac{1}{3}$	22 $\frac{2}{3}$	386	257 $\frac{1}{3}$	128 $\frac{2}{3}$
78	52	26	406	270 $\frac{2}{3}$	135 $\frac{1}{3}$
86	57 $\frac{1}{3}$	28 $\frac{2}{3}$	426	284	142

List of Task Force Members and Participants

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