

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**September 15, 2011**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on September 15, 2011, in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblad, Jason Anderson, Hon. Edward Cleary, Sgt. Paul Ford, Connie Larson, Hon. Helen Meyer, DOC Commissioner Tom Roy, Hon. Gordon Shumaker, John Stuart, Yamy Vang, and Sarah Walker. MSGC staff present were Katie Madland, Linda McBrayer, Executive Director Kelly Mitchell, Jill Payne, and Anne Wall. Jim Early from the Attorney General's Office and Bill Lemons, representing the Minnesota County Attorneys Association, were also present.

**1. Call to Order.**

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

**2. Approval of Meeting Minutes from June 16, 2011.**

**Motion** was made by Sgt. Paul Ford and seconded by Jason Anderson to approve the minutes from September 15, 2011.

**Motion carried.**

**3. Executive Director's Report.**

Kelly Mitchell gave the Executive Director's report.

- The Commission trainer, Linda McBrayer, just recently launched online training for practitioners via Webex. This new format will allow Linda to provide training more frequently, to provide intensive focus on single topics, and to reach a greater number of individuals, especially those in the outstate areas.
- Ms. Mitchell attended the National Association of Sentencing Commissions Conference in August. Some of the more interesting initiatives that were discussed at the conference were:
  1. Cost-Benefit Analysis. The State of Washington has created a cost-benefit analysis model that allows them to measure the impact of changes in spending in corrections and community services on overall crime rates and spending. The Pew Center on the States has partnered with Washington to develop similar models in other states.

2. Mandatory Minimums. Pennsylvania and Oregon both recently undertook studies to determine the impact of mandatory minimum sentences that had been enacted by their legislatures. In Pennsylvania, the study found:
  - About 34% of mandatory-eligible charges did not result in conviction for a mandatory eligible offense.
  - Overall, about 45% of the mandatory eligible offenses received a mandatory sentence.
  - In general, offenders who had prior convictions, and/or were convicted via a trial were more likely to receive the mandatory sentence.

In Oregon, the study found that more than 70% of offenders indicted by grand jury for committing a crime carrying a mandatory minimum were not convicted of the most serious offense in the indictment. Instead, most of the offenders resolved their cases by pleading guilty to a lesser charge in a bargain offered by the prosecution, and the sentences in those cases ranged from probation to prison. As a result, the study concluded that the mandatory minimum sentences shifted sentencing decision making from the judge to the prosecutor.

3. Risk Assessment. The State of Oregon has recently developed a risk assessment tool called the Oregon Public Safety tool. The tool is an online system that predicts risk of recidivism. To use the tool, one enters an offender's state identification number and the current statute under which the offender has been charged. The tool will return risk of re-arrest for a person or property offense and the risk of reconviction for a felony. Because the tool is relatively new, no formal process has been developed for when and how it should be used. But Oregon representatives indicated that the tool provides an additional piece of information for the judge to consider at sentencing, and that it is likely to be most useful when the judge is making a decision along the dispositional line (between prison or probation).

#### **4. EBP 101 – An Overview of Correctional Evidence-Based Practices**

In response to an offer at the July meeting by Commissioner Roy to provide an overview of the assessment tools in use by corrections to manage probation offender, Jason Anderson provided a short presentation on evidence-based practices (EBP). Mr. Anderson explained that EBP is doing what works. The concept is used in nearly every profession, but in the context of the criminal justice system, the goal is to reduce recidivism. The general framework used by DOC probation for implementing EBP includes:

- Assessment (Minnesota uses the LSI-R)
- Understanding Offender Motivation
- Targeted Interventions (more intensive interventions with high risk/high need individuals)

- Skills Training with Directed Practice
- Increased Positive Reinforcement
- Measurement
- Feedback

Mr. Anderson noted that two states – Missouri and Virginia – have incorporated risk assessment into their guidelines. Missouri provides the sentencing judge with information about the projected recidivism rate for various sentences that might be ordered for specific offenses. Virginia has developed a nonviolent risk assessment to divert low risk offenders from prison. The commission may want to discuss further whether EBP could be incorporated into the guidelines.

Following Mr. Anderson’s presentation, the commission generally discussed the current character of the guidelines and the concept of risk. One member pointed out that the current guidelines are intuitive rather than evidence based. It makes sense that an individual who commits a more severe crime should receive a harsher sentence. But the specific numbers in each box have not been validated with regard to results. Another member added that much of the research regarding impact on sanctions on recidivism has been done since the creation of the guidelines. When Guidelines were created, risk to recidivate was considered, but criminal history was the best possible information available, so criminal history became a proxy for risk. A member commented that the initial guidelines were developed as a simple tool to bring about uniformity in sentencing, but the numbers themselves were fundamentally arbitrary.

A member asked whether EBP is a financial question; a response to shrinking budgets. Mr. Anderson responded that finances often present opportunity, but stated that the current movement is more about focusing on what works. It was mentioned that there seems to be a disconnect between what the public wants works. Drug sentencing policy was raised as an example of an area where sentences have become harsher, but evidence suggests that treatment may be a better response than prison. Another member commented that the commission’s options are limited by legislatively set policy (e.g., mandatory minimums). And several members questioned the limits of the commission’s authority (e.g., can the commission study and make recommendations independently, or can the commission only work on issues as requested by the Legislature).

Going back to the concept of risk, one member reminded the group that the guidelines state, “Sentencing should be neutral with respect to race, gender, social, or economic status.” The member questioned whether EBP would result in harsher sentences solely based on factors such as unemployment and economic status. Another member responded that the commission should consider whether what we have is in fact neutral with respect to those categories.

## 5. Non-Felony Sentence for Felony Conviction

Ms. Mitchell explained that the commission is seeing an increase in the number of non-felony sentences pronounced for felony offenses; just over 5% in 2010. Reduced sentences such as these are typically pronounced when the offense is one that cannot be amended down to a gross misdemeanor because no such offense exists (e.g., terroristic threats). The sentences are typically pronounced when individual circumstances arise indicating that a less severe sanction may be warranted. But because the sentence is not the presumptive sentence recommended by the guidelines (or a sentence within the applicable range), the sentence is a departure. Commission staff has noticed that the court often fails to issue a departure report in these cases because the court mistakenly believes that the reduction in the level of sentence pursuant to Minn. Stat. § 609.13 means that the charge is also reduced to a felony. Instead, only the conviction level is reduced. The charge remains a felony. Commission members were asked whether section 2.D. and/or the comments to section 2.D. should be amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, and the charge was not been amended prior to conviction, the sentence is a departure. John Stuart stated that public defenders are opposed to the change because they believe it will interfere with their ability to resolve cases.

**Motion** was made by Hon. Shumaker and seconded by Sgt. Ford to amend section 2.D. as proposed.

**Motion carried**; John Stuart voted no.

The commission then discussed whether the comment should also be amended to further clarify the language in section 2.D. One member commented that this seems like a training issue. Other members raised several questions about language choices within the comment.

Hon. Helen Meyer requested a legal opinion as to what “deemed” means in Minn. Stat. § 609.13 (i.e., “deemed” for what purposes?).

**Motion** was made by Commissioner Roy and seconded by Hon. Gordon Shumaker for staff to revise the comment language for consideration at the next meeting. Chair Edblad offered a friendly amendment that staff work with legal counsel given the earlier request for a legal opinion.

**Motion carried**.

## 6. Sentencing Guidelines Revision Project

Ms. Mitchell presented a proposal for continuing the guidelines revision project that was started in 2010. Phase 1, which was completed with the publication of the 2011 Guidelines, focused on reformatting the Guidelines to improve their visual appearance and organization. Phase 2 will involve rewriting the Guidelines to make them easier to read, use, and understand.

**Motion** was made by Hon. Gordon Shumaker and seconded by Connie Larson to move forward with the project.

**Motion carried.**

Ms. Mitchell requested volunteers to serve on a subcommittee to work on the project. Jason Anderson and Chair Edblad volunteered. Commission members stated that the project should be primarily staff driven and that outside subject matter experts should also be consulted for participation in the project. Chair Edblad indicated that anyone else who might be interested in participating on the subcommittee should notify Ms. Mitchell by email.

**7. Other Business**

- **Prison Tour:** Commission members will have an opportunity to tour the Minnesota Correctional Facilities at Stillwater and Oak Parks Heights in October. The tour will be conducted in lieu of the October meeting. Because the regular meeting date falls during the Minnesota Education Association (MEA) break, the tours will be offered on Thursday, October 27, 2011.
- **Commissioner Shumaker's Retirement:** Hon. Gordon Shumaker is retiring from the Court of Appeals on October 14, 2011, so this meeting is his last. Chair Edblad presented Commissioner Shumaker with a plaque in recognition of his ten years of service.
- **Role of the Commission:** Following up on the conversation from the EBP portion of the agenda, Connie Larson asked legal counsel to provide an explanation of the powers of the commission.

**8. Public Input**

There was no input from members of the public.

**8. Adjournment**

**Motion** for adjournment was made by Hon. Gordon Shumaker and seconded by Connie Larson.

**Motion carried.**

Chair Edblad adjourned the meeting at 4:05 p.m.