

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
February 19, 2009

The Commission meeting was held on February 19, 2009, at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Judge Edward Cleary, Commissioner of Corrections Joan Fabian, Tracy Jenson, Sheriff Brad Gerhardt, Judge Gordon Shumaker, Kari Berman, Connie Larson, and Reverend Robert Battle. Executive Director Suzanne Alliegro and MSGC staff members Jill Payne, Anne Wall, and Bethany Habinek were present. Also in attendance was Jim Early from the Minnesota Attorney General's Office and Matt Majovski from Dakota County Community Corrections.

I. Call to Order

The meeting was called to order by Chair Edblad at 2:04 p.m.

II. Approve Meeting Minutes from January 15, 2009

Motion was made by Tracy Jenson to approve the minutes from January 15, 2009, and was seconded by Chair Edblad.

Motion carried without dissent.

III. Executive Director's Report

A. Budget

Executive Director Suzanne Alliegro updated Commissioners on the budget for the next fiscal year. The current budget for the office and staff is \$609,000 per year. The office was given a 5% budget cut, amounting to \$30,000 per year. While the majority of the cut will be fairly easy to absorb, a small portion may be difficult, but manageable. Ms. Alliegro reported that budget hearings for both House and Senate Committees went very well. The House presentation required more detail as to how the agency could be more efficient and

cut back even further on costs. There was a proposal to repeal reports required from the agency on juveniles placed out-of-state as well as county attorneys reporting on charging practices and firearms.

B. Legislature

Executive Director Alliegro stated that there have been 14 fiscal notes prepared by staff so far this session. To date, there have been no significant issues that would affect the sentencing guidelines. Ms. Alliegro was asked by the chair of the House Public Safety Oversight and Policy Committee if the Commission had ever adjusted the guidelines based on departure rates. A similar question was asked by a reporter for a Minneapolis paper regarding sex offender cases, specifically interfamilial cases. Questions from both parties were related to whether or not the Commission is using their data to draw conclusions about sentencing practices and reviewing the guidelines' policies accordingly. The Commission was provided with statistics on interfamilial sex offender cases. In 2007, there were 70 cases which received a downward dispositional departure; a rate of 43 percent.

Executive Director Alliegro asked Commission members if, given the high departure rates, this is an issue that should be addressed. Judge Shumaker noted that it would be a good idea to discuss the matter since the departure reports are available. He would not move to change the guidelines, but thought it would be helpful to have the information on hand. Connie Larson was also not in favor of changing the guidelines, but asked about follow-up. Chair Edblad made the comment that it has not been very long since the sex offender grid went into effect. He noted that it is perhaps too early to think about changing policies related to sex offenders.

Ms. Alliegro reported that legislators have been told by practitioners that mandatory minimums are making sentencing more complicated as well. Kari Berman opposed changing mandatory minimums, making the argument that it would interfere with the consistency of outcomes of cases from courtroom to courtroom. Ms. Alliegro suggested that staff could prepare a presentation about departures which could be discussed at a future Commission meeting.

C. Guidelines Evaluation

Executive Director Alliegro raised the idea of having the PEW Foundation evaluate the guidelines for areas that could be changed or updated. This would allow the Commission to receive opinions from other practitioners in determining whether the guidelines are too complex. Connie Larson expressed her concern that simplifying the guidelines could be taken out of context and used as reasoning for indeterminate sentencing. Tracy Jenson was in support of looking at the guidelines to determine if any particular issues need to be discussed. All Commission members agreed.

D. Race Project

Executive Director Alliegro discussed the initial intent of the Race Project with the Commission. The goal was to acquire data beyond what the sentencing guidelines already possess in determining whether racial disparity exists in sentencing. In attempting to collect PSIs for the project, the Department of Correction (DOC) indicated to Ms. Alliegro that they are bound by statute from releasing background information on offenders and, therefore, cannot provide the PSIs for purposes of the race research project. This creates a problem in completing the project, as the majority of the information needed cannot be retrieved except from the PSI. Ms. Alliegro pointed out that MSGC's database has been studied quite extensively already. She questioned the benefit of the study since no further information can be obtained.

Commissioner Fabian explained that, after doing some research, attorneys for DOC concluded that the PSIs could not be released due to confidentiality reasons. DOC has basic statistics on the background of offenders, but may not be able to split it up by race. Sheriff Gerhardt pointed out that the best data comes from initial officer contact. However, collecting all of this data, even in a county as small as his, would overwhelm his staff. Reverend Battle discussed long-term plans for acquiring the type of information found on the PSIs. He suggested that the Commission talk to the Legislature to ensure that this will be tracked and made available in the future. Chair Edblad noted that perhaps, from a practical standpoint, the Commission could not go any further on the project. All Commissioners agreed that it would be a good idea to speak to Justice Page and the Supreme Court's Racial Fairness Committee to explore different options.

IV. Consecutive Sentencing for Attempted Offenses

The Minnesota Court of Appeals decision, *State v. Brandon M. Johnson* (Minn. App. 2008), determined that permissive consecutive sentences could not be imposed for attempted offenses other than attempted first-degree murder because they are not on the list of offenses eligible for permissive consecutive sentencing in the guidelines. Since 2006, there have been four cases in which this issue has arisen. The Commission discussed whether or not it wanted to revise the policy to include attempted offenses.

Judge Shumaker stated that attempts of those offenses currently on the list should be included for permissive consecutive sentencing. He noted that the Commission should be simplifying the guidelines whenever possible. Chair Edblad raised the idea of adding conspiracies to the list as well. Both Judge Shumaker and Sheriff Gerhardt agreed to make conspiracies eligible in an effort to create more clarity in the guidelines. Chair Edblad pointed out that if the proposed modifications were to go into motion there would be a public hearing.

Motion was made by Judge Shumaker and seconded by Judge Cleary to make convictions for attempts or conspiracies of offenses on the Permissive Consecutive Sentences list in Section VI, eligible for permissive consecutive sentencing.

Motion carried without dissent.

V. Technical (Non-Legislative) Modifications to the Sentencing Guidelines

Commissioners reviewed three technical modifications to the sentencing guidelines. The first modification involved the ranking of an inadvertently unranked offense under M.S. § 211B.13, which states that is a felony to bribe, treat, or solicit a person to vote in a certain way or refrain from voting. Commission members were given severity levels of other bribery offenses as a comparison.

Motion was made by Judge Shumaker and seconded by Sheriff Gerhardt to rank M.S. § 211B.13 at a Severity Level 4.

Motion carried without dissent.

The second modification involved changing the statutory references in the sentencing guidelines for M.S. § 624.713, certain persons not to possess firearms, due to restructuring. Changes would be made to the Offense Severity Reference Table, Misdemeanor and Gross Misdemeanor Offense List, and the Numerical Reference Table.

Motion was made by Commissioner Fabian and seconded by Kari Berman to accept changes to statutory references in the sentencing guidelines.

Motion carried without dissent.

The final modification involved changing the statute title for M.S. § 609.2231 subd. 2, assault in the fourth degree, to include “Emergency Medical Personnel” and “Firefighters” in the unofficial numerical reference guide.

Motion was made by Connie Larson and seconded by Commissioner Fabian to amend the numerical reference guide.

Motion carried without dissent.

All the proposed technical modifications will be included in the July 2009 Public Hearing Notice.

VI. Public Input

Matt Majovski from Dakota County Corrections addressed the Commission about simplifying the guidelines. He raised concerns about providing more clarification for mandatory minimums, particularly for cases of Assault 2nd Degree. Many attorneys and judges rely on his office to provide knowledge about the guidelines. However, because the guidelines are at times difficult to interpret, Mr. Majovski feels he is sometimes unable to assist.

VII. Adjournment

Motion was made by Tracy Jenson to adjourn. The motion was seconded by Reverend Battle.

Motion carried without dissent.

The meeting was adjourned at 3:30 pm.