

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**November 18, 2010**

The Commission meeting was held on November 18, 2010, at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Darci Bentz, Judge Edward Cleary, Commissioner of Corrections Joan Fabian, Sheriff Brad Gerhardt, Tracy Jenson, Connie Larson, Judge Helen Meyer, and Judge Gordon Shumaker. Executive Director Suzanne Alliegro, MSGC staff members Jill Payne, Anne Wall, and Kathleen Madland were also in attendance. Member of the public, Matt Majovski from Dakota County Community Corrections, was also present at the meeting.

**1. Call to Order**

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

**2. Approval of Meeting Minutes from October 21, 2010**

**Motion** was made by Judge Shumaker and seconded by Connie Larson to approve the minutes from October 21, 2010.

**Motion approved** without dissent.

**3. Executive Director's Report**

Suzanne Alliegro gave her executive director's report.

• **Update: Star Tribune Editorial-The Koua Fong Lee Case**

Ms. Alliegro had received a phone call from an editorial writer from the Star Tribune on November 18, 2010, inquiring if any action was taken due to the "Justice for Koua Fong Lee" editorial, which discussed concurrent verse consecutive sentencing for a single act involving multiple victims. Ms. Alliegro indicated that she had not been contacted by

anyone about the article but that the article was discussed at the commission meeting held on October 21, 2010. The author of the editorial was grateful that her article had been addressed. Ms. Alliegro mentioned to the reporter that she is welcome to present any information pertaining to this topic to the commission. There is likely to be a follow-up in regards to the issues discussed in the editorial.

- **The Restructuring of Legislative and Senate Committees**

Ms. Alliegro brought to the commission's attention that the Minnesota legislative committees have been restructured. Prior to restructuring in the House, there was a public safety policy committee, a public safety finance committee, a civil law committee, and no judiciary committee. With the restructuring, the public safety policy committee and public safety finance committee have been combined, headed by Representative Tony Cornish. A judiciary policy and finance committee has been established and is being chaired by Representative Steve Smith. Representative Torrey Westrom is chairing the civil law committee. In the Senate, they had a judiciary finance committee that took care of courts and the public defender. Most of the other public safety agencies including MSGC and corrections were handled by the public safety finance committee. Additionally, policy matters were handled by the judiciary committee. The Senate has put those three committees together into one judiciary and public safety budget and policy committee, chaired by Senator Warren Limmer.

- **The Effect of Drug Courts on Departure Rates**

At a previous meeting, held on October 21, 2010, MSGC members reviewed departure rates for controlled substance offenses in each of the ten MN judicial districts, and asked whether or not there was any correlation between departure rates and drug courts. In 2009, only three districts gave the presumptive sentence in the majority of controlled substance cases. The Eighth Judicial District had the highest compliance rate at 88 percent, followed by the Third at 59% and the Seventh at 56%.

In 2009, 45 percent of drug offenders who were recommended prison under the sentencing guidelines were sentenced to prison for the recommended duration or longer; 37 percent got probation; and 18 percent received a prison sentence, but for less than the recommended time (mitigated durational departures).

No conclusion can be drawn from this data about the correlation between departure rates and drug court counties. Overall, there does not appear to be a difference in departure rates between counties with drug courts and those without. Sentencing practices vary widely both in counties with drug courts and counties without drug courts.

According to table 1, offenders sentenced in counties with drug courts were more likely to receive a departure; however, the percentage receiving probation was almost identical between the two groups. Offenders sentenced in counties with drug courts were also more likely to get prison sentences with less time than offenders sentenced in counties without drug courts.

Table 2 displayed departure rates by the type of drug court. Some counties have courts that are traditional drug courts while others have courts that are hybrid drug and DWI courts. There is one hybrid drug-family dependency treatment court. Dispositional departures to probation are highest in the counties with hybrid courts, but there are few cases so no conclusions can be drawn.

Table 3 displayed departure rates by the type of participants who are admitted. According to the Minnesota Judicial Council's Drug Court Standards, only people who are chemically dependent are appropriate for admittance into drug court. Some courts further refine admittance. A number admit all first-through fifth- degree cases, while some are limited to participants who have "non-violent" offenses. Others restrict admittance to second- through fifth-degree or third- through fifth-degree offenses while some limit participants to first- and second-degree or repeat third- through fifth-degree. Downward dispositional departures to probation are highest in the counties that limit their cases to second-through fifth-degree or third-through fifth-degree, and lowest in the courts that accept all degrees.

Table 4a and 4b looked at departure rates by county. Departure rates vary widely both in counties with drug courts and counties without drug courts. In many smaller counties where there are few cases, there are only a few controlled substance offenses. Therefore, percentages are somewhat skewed. Hennepin, which had the most cases of any county, had a downward dispositional departure rate of 35%, a downward durational departure rate of 33%, and had no departure 32% of the time. Ramsey had a downward

dispositional departure rate of 25%, a downward durational departure rate at 31%, and gave no departure 44% of the time. Of all the counties with no drug court (table 4b), Anoka had a downward dispositional departure rate of 63%, a downward durational departure of 3%, and gave no departure 34% of the time.

Ms. Alliegro reiterated that, although there was a fair amount of information, no correlation between departure rates and drug courts could be drawn.

Commissioner of Corrections Fabian also stated that comments have been made that drug courts keep offenders out of prison, and this research does not show that to be the

- **Star Tribune Article- Minnesota's Inmate Release Program Failure Rate: 40%**

Commission members received a copy of a newspaper article provided to them in their meeting materials. On October 27, 2010, a Star Tribune article focused on Minnesota's supervised release program's 40 percent failure rate. The length of a prisoner's supervised release is one-third of the total executed sentence pronounced by the court, regardless of the offense. The article suggested that supervised release may be modified to tailor supervision conditions for certain offenders, focusing resources on monitoring high-risk offenders. Retired Appeals Court Judge Jack Davies was quoted in the article as being in favor of bringing back a parole board.

Commissioner of Corrections Fabian commented that the statistic in the article that states 40 percent of Minnesota convicts who are let go from prison on supervised release either run from authorities or commit new crimes, may be including technical violations of probation.

Judge Shumaker also stated concern that the wording in the article may give the impression of a higher failure rate than is realistic. The phrase "let go from prison" may also include those that have already served their prison sentence. This wording may insinuate that offenders are released before serving their prison time when, in actuality, they are being "let go from prison" being they have served their prison time.

#### **4. Approval of the Annual Report to the Legislature**

The MSGC Report to the Legislature is due on January 15, 2011, and will be sent electronically to a distribution list, with two hard copies being sent to the Legislative Reference library.

The report reveals that, in a 2008 comparison, the Bureau of Justice Statistics determined that Minnesota's prison incarceration rate was the second-lowest of all states in the nation with a 179 inmate per 100,000 resident ratio. Additional reports on overall data trends in 2009 and sentencing practices for specific offenses including assault offenses and violations of restraining orders, controlled substance, criminal sexual conduct, criminal vehicular homicide and injury, dangerous weapons, failure to register as a predatory offender and felony DWI, as well as unranked offense report and probation revocation report are available on the commission's website. An executive summary on page 2 highlights topics which may be of interest to the legislature and on what page of the report they can be found.

Commissioner of Corrections Fabian pointed out a statistical discrepancy on pages 2 and 3 of the report. Page 2 states that there were 14,840 felony offenders sentenced in 2009, a 4% decrease from 2008. Page 3 states that there were 14,840 felony offenders sentenced in 2009, a decrease of 3.6 percent. She also recommended putting examples of "person" crimes on page 5 of the annual report because there may be confusion on what constitutes a "person" crime.

The commission's activities in 2010 included new crime legislation. Identity theft was amended to include scanning devices and reencoders. The commission ranked the new crime of unlawful possession or use of a scanning device or reencoder, at severity level 2. Additionally, possession of a dangerous weapon on school property has been reranked at a severity level 4. Non-legislative modifications and technical modifications were also discussed in the report. The details of all the modifications are contained in the appendices. The staff's activities in 2010 included 25 training sessions held in various locations throughout the state for over 500 criminal justice practitioners. Staff also participated in seven sentencing training seminars for judges and court staff sponsored by the State Court Administrator's Office and offered two webinars to the County Attorneys Association. Additionally, staff developed and made available on the website various training materials including a narrated PowerPoint training, and answered questions regarding the application of the guidelines through phone calls and emails on a daily

bases. In the future, if budget concerns arise, MSGC may incorporate more webinars as a way to reduce cost.

The report also gave fiscal/racial-impact statements. The commission prepared 28 fiscal impact statements for any proposed legislation that may result in a net increase in state correctional facility beds. Additionally, staff prepared 24 fiscal impact statements in response to draft legislation.

The report also discussed the impact of statutory enhancements including fourth-degree assault, felon in possession, failure to register as a predatory offender, and driving while impaired offenses. The report also examined the impact of Blakely and expanded ranges and the county attorney firearms report. Since the mandate for firearms reports began in 1996, the average number of annual cases involving firearms statewide has been 689. Between July 1, 2009 and July 1, 2010, there were 769 cases allegedly involving a firearm. Prosecutors charged 755 cases (99%).

The commission expressed how pleased they were with the report and commended staff on their efforts.

**Motion** was made by Commissioner of Corrections Fabian and seconded by Tracy Jensen to adopt with the corrections that were suggested.

**Motion approved** without dissent.

## **5. Public Input**

There was no input from members of the public.

## **6. Adjournment**

The December 16, 2010, commission meeting has been cancelled. The next commission meeting is tentatively scheduled for January 20, 2011.

Chair Edblad adjourned the meeting at 2:30 p.m., without objection.

*Chair Edblad expressed his thanks to commission members and staff and said it was his*

*pleasure chairing the guidelines commission.*

*A certificate was presented to MSGC from the State of Minnesota, Office of the Governor.*

*Chair Edblad read the following:*

*This certificate is presented to the Minnesota Sentencing Guidelines Commission in recognition of your thirtieth anniversary. For thirty years, the commission has worked toward the development of policy and practice in keeping with Minnesota's sentencing goals of public safety, proportionality, avoidance of unfair disparity, rational use of correctional resources, and transparency. Therefore, with the appreciation and respect of the people of Minnesota, this certificate is presented to the Minnesota Sentencing Guidelines Commission.*

*A letter sent to the commission from Judge Larry Collins was read by Judge Shumaker. Judge Collins is a retired judge who served on the commission in the 1980s. The letter stated that, even though he will not be able to attend the reception recognizing the thirtieth year anniversary of the guidelines, it was a privilege to serve on the guidelines and that he would like to express his respect to the guidelines and extend best wishes to their continuing service to this state.*

*\*A reception recognizing the 30-year anniversary of the Minnesota Sentencing Guidelines followed the meeting.*