

Minnesota Sentencing Guidelines Commission
Meeting Minutes
March 18, 2010

The Commission meeting was held on March 18, 2010 at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Tracy Jenson, Justice Helen Meyer, Judge Edward Cleary, Sheriff Brad Gerhardt, Darci Bentz, Kari Berman, and Connie Larson. Executive Director Suzanne Alliegro, MSGC staff members Jill Payne, Anne Wall, and Jeff Holtz along with Jim Early from the Minnesota Attorney General's Office were also in attendance.

I. Call to Order

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

II. Approval of Meeting Minutes from December 10, 2009

Motion was made by Justice Meyer to approve the minutes from December 10, 2009, and was seconded by Sheriff Gerhardt.

Motion approved without dissent.

III. Possible Technical Modification to the Sentencing Guidelines: *Clarify presumptive sentence language for subsequent controlled substance convictions –Effective August 1,2010*

MSGC Staff member Jill Payne described this possible modification as more of a housekeeping clarification for subsequent controlled substance convictions. The issue pertains to the difference in decay lengths between Minnesota statute and the guidelines when it comes to enhancing a drug offense due to a previous drug conviction. While state statute says a prior drug conviction or stay of adjudication can only be used to make the current drug offense into a subsequent if the prior has occurred within the last 10 years, the guidelines say it can be used for enhancement

even if it has decayed. Ms. Payne stated that the change would be to delete language in section II.C. of the guidelines so that the language conforms with state statute.

Guidelines Section II.C:

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid....

When the current conviction offense is a first, second, or third-degree controlled substance crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or a similar conviction or disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. ~~A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from convictions and dispositions under Minn. Stat. § 152.18. A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence or the stay of adjudication (Minn. Stat. §152.01 Subd.16a)...~~

Motion was made by Commission member Darci Bentz to approve the modifications and was seconded by Judge Cleary.

Motion approved without dissent.

IV. Executive Director's Report

Executive Director Suzanne Alliegro informed the Commission that the agency is preparing for a 3% cut to unspent funds for the current fiscal year and for a 3% cut in future spending. She stated that the agency will be able to make up these cuts by moving agency offices to a different location where the rent will be 2/3 less than it is currently. She also mentioned that the actual budget cut for the agency has yet to be determined as the Minnesota House of Representatives and the Governor's Office are proposing a different budget than the Minnesota Senate is proposing.

As mentioned at previous commission meetings, an amendment made to fifth-degree controlled substance crimes (2009 MN Session Law, Chapter 83, Article 3, Section 3) changed the mandatory minimum sentence of six months in a local correctional facility

for repeat offenders from an unwaivable to a waivable one. However, the law misstates that "sentencing a person in this manner is a departure from the sentencing guidelines." Director Alliegro announced that the law will be corrected this session in the revisor's bill.

Director Alliegro also reported that she and Chair Edblad gave a presentation at the legislature regarding the Commission's decision to move certain prostitution crimes to the Sex Offender Grid. It was stated that some members of the legislature were concerned about the fiscal impact to the state that would occur due to the prison bed impact of 23 beds. Because of this, Director Alliegro said that it appears the legislature will be delaying the implementation of the change until August 1, 2011 so the cost of the prison bed impact can be delayed. Judge Cleary asked if the Commission's modifications conflicted at all with the goals of the governor regarding criminal sexual conduct policy changes and Director Alliegro stated that it would be hard to answer that at this point because of uncertainty as to whether any changes will be enacted to the criminal sexual conduct laws this legislative session.

Director Alliegro noted that the proposals for how to modify the criminal sexual conduct laws vary greatly between the Minnesota Senate and the Governor's proposal which is the House version. This is because the Minnesota Senate changed their proposal so as to provide for indeterminate sentences as well as expanding the pool of offenders eligible for mandatory life sentences and creating mandatory statutory maximum sentences for certain criminal sexual conduct offenses. Ms. Wall explained that while the indeterminate sentencing portion does make it more difficult to determine the fiscal impact, MSGC was able to estimate the senate's version as having an impact of 838 beds. She also mentioned that even though the senate version is different than the governor's proposal, both have the same goal of having fewer sex offenders sent to the Minnesota Sex Offender Program at Moose Lake. Director Alliegro stated that an important way the senate proposal tries to accomplish that goal is by making it so offenders are not eligible for civil commitment if they are given an indeterminate sentence. Another part of the picture is the lower rate of recidivism for sex offenders compared to the overall probation population. Ms. Wall responded by stating that according to Department of Corrections data for criminal sexual conduct offenders sentenced in 2005, 9% have been sentenced for a new felony since that time,

compared to 15% for the overall 2005 felony population.

Director Alliegro then stated that she is looking into hiring a technical writer who could rewrite the guidelines book to make it easier to read and follow but that she first wants to find out the reaction of the Commission members. Commissioner Bentz stated that she knows many practitioners who would be very thankful if the language in the guidelines was simplified. Chair Edblad asked if a timeline has been created at this point and Director Alliegro stated that a timeline has not been determined yet because she first wanted to see how the Commission felt about it.

Director Alliegro also let Commission members know that MSGC staff completed several data request projects for a staff writer from the Star Tribune for their continuing series on criminal vehicular homicide or operation offenses. The requested data included case level sentencing and departure information.

V. New sentencing practices data report: Impact of *Blakely* and Expanded Ranges on the Sentencing Grid

Ms. Wall gave an introduction to the report by stating that after *Blakely* occurred, the Commission at that time decided to increase the ranges on the grid to allow judges a larger sentencing range to work with. The change caused the grid ranges to be 20% higher than the presumptive middle and 15% lower than the presumptive middle. One trend that the report describes is that since *Blakely*, the percentage of offenders who are sentenced on the lower end of the box has increased while the percentage of offenders who are sentenced at the upper end of the box has remained stable. Ms. Wall also stated that because *Blakely* made it more difficult to issue an aggravated sentence, the data shows that the percentage of offenders who received an aggravated durational departure above the box range has decreased. Judge Cleary asked if there were any other conclusions that could be made based upon the report and Ms. Wall stated that because of the larger range on the lower end of the box, the percentage of downward durational departures outside of the box has decreased as well. She also mentioned that when the Commission choose to increase the ranges on the grid, there was a fear that there would be an increase in the percentage of offenders sentenced at the upper end of the box but the data shows that this did not occur.

VI. Announcements

Director Alliegro stated that staff is currently working with the State Court Administrator's Office and other criminal justice agencies on developing training on different sentencing issues. The training will be given to judges and their staff beginning in April. She also mentioned that it does not appear that there will be a need for a Commission meeting in April.

VII. Public Input

No members of the public were present to offer public input.

VIII. Adjournment

Motion for adjournment was made by Sheriff Gerhardt and was seconded by Commissioner Larson.

Motion approved without dissent. Chair Edblad adjourned the meeting at 3:15 p.m.