

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
December 15, 2011

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on December 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, Hon. Edward Cleary, Sgt. Paul Ford, Connie Larson, Hon. Helen Meyer, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, Yamy Vang, and Sarah Walker. MSGC staff present were Executive Director Kelly Mitchell, Jill Payne, and Anne Wall. Also present were Jim Early from the Attorney General's Office, Bill Lemons from the Minnesota County Attorneys Association, and Professor Richard Frase and Professor Kevin Reitz from the University of Minnesota School of Law.

1. Call to Order.

The meeting was called to order at 2:03 p.m.

2. Approval of Meeting Minutes from September 15, 2011.

Motion was made by Commissioner Roy and seconded by Connie Larson to approve the minutes from November 17, 2011.

Motion carried.

3. Robina Institute of Criminal Law and Criminal Justice

Professor Frase and Professor Reitz made a presentation to the Commission about the Robina Institute of Criminal Law and Criminal Justice, which was recently founded at the University of Minnesota School of Law. The Institute was founded as the result of three things coming together: the need for criminal justice policy research, the availability of funding from a newly created foundation, and the existence of strong criminal justice faculty at the university. The goal of the Institute is "to do transformative work." The faculty will: (a) work with sentencing commissions in areas deemed important to the commissions; (b) work with states that do not have sentencing commissions to improve existing parole systems; and (c) serve as the reporter for a revision of the Model Penal Code. Some examples of projects the Institute might undertake include looking at the use of risk assessment at various stages of the criminal case, examining the extent to which criminal history drives racial disparities in prison, and looking at the relationship between criminal history and recidivism. The Institute will hold a meeting in March 2012 with members and staff from sentencing commissions around the country and other sentencing scholars to decide on some initial projects. All MSGC members were invited to attend.

While discussing some of the potential projects, a member asked if the presenters were suggesting that prior record is not relevant in a sentencing model related to recidivism. The presenters clarified that their view is that if criminal history is relevant, it would be

justified by its ability to predict recidivism, not on the theory that the offender is more culpable for the current offense in proportion to the length of the prior record. Another member noted that the ability to use actuarial instruments predates the Guidelines. When the Guidelines were developed, there was not much discussion about predicting recidivism; instead the discussion was about just desserts and retribution. The presenters affirmed that statement, commenting that the Commission did say in passing that criminal history related to risk, but given the short timeframe within which the Commission had to create the Guidelines, there was no time or resources to validate the relationship between criminal history and risk to recidivate. Given the presenters' historic knowledge of the Guidelines, a member asked the presenters for their view on whether the Commission was intended to have an independent or somewhat independent role in making sentencing recommendations to the Legislature. The presenters stated that in the 1970's, when the idea of a sentencing commission was being proposed nationally, the idea was for the commission to be an independent administrative agency, recognizing that any such agency works under the supervision of and subject to the oversight and overruling of the legislature. The advantage of having a Commission is that it is a body that can develop expertise, that has a longer term perspective, and that can look at sentencing issues comprehensively (e.g., patterns in all felonies versus a crime that recently made headlines). In a well-run system, the legislature would defer to the recommendations of the commission in most cases, but would ultimately have authority to decide the issue.

4. 2012 Report to the Legislature

Kelly Mitchell presented to the Commission the final draft of the 2012 Report to the Legislature. The final draft contains the three special sections approved by the Commission at the November meeting, as well as the additional edits and corrections that the Commission requested.

Motion was made by Yamy Vang and seconded by Sgt. Paul Ford to approve the report as written.

Motion carried.

5. Non-Felony Sentence for Felony Conviction

At the September meeting, the Commission approved an amendment to section 2.D. to clarify that it is a departure to pronounce a gross misdemeanor or misdemeanor sentence for a felony conviction. At that meeting, the Commission also considered a proposed comment, but after discussion, requested that staff further revised the proposal. Kelly Mitchell presented the revised proposed comment for consideration at this meeting. The members discussed it, and further revised it as follows:

2.D.05. Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the

applicable range on the grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D. was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.

In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of terroristic threats (Minn. Stat. § 609.713) in statute, so a terroristic threats charge cannot be amended from a felony to a gross misdemeanor.

Motion was made by Connie Larson and seconded by Commissioner Roy to approve the comment as amended.

During discussion on the motion, a member commented that there will need to be training on this issue because many practitioners believe that the effect of Minn. Stat. § 609.13 is that there was never a felony conviction. Another member agreed that training is necessary and stated every lawyer in the courtroom has a duty to inform the court when the court is getting it wrong.

Motion carried.

6. Other Business

- Recognition of Service, Judge Cleary. Judge Cleary has been appointed to the Court of Appeals, so this is his last meeting. Chair Edblad presented Judge Cleary with a plaque in recognition of his service to the Commission.
- Executive Committee Membership. Chair Edblad explained that the Commission has an Executive Committee whose role it is to assist the Executive Director with various issues. The membership consists of the Chair, Vice-Chair, Commissioner of Corrections, and one other member. Judge Shumaker was formerly on the Executive Committee, but with his retirement, it is necessary to appoint a new member to the Committee. Justice Meyer nominated Judge Schellhas, who accepted the appointment.
- 2012 Meeting Dates. The Commission confirmed the meeting dates for 2012. The Commission will continue to meet on the third Thursday of the month from 2 p.m. – 4:00 p.m. However, in January, the Commission will instead meet on Tuesday, January 3, 2012 from 10 a.m. – 12 p.m. to allow sufficient time to provide comment to the Legislature on proposed legislation related to sex offender sentencing (SC8394-1).

7. Public Input

There was no additional input from the public.

8. Adjournment

Motion for adjournment was made by John Stuart and seconded by Judge Cleary.

Motion carried.

Chair Edblad adjourned the meeting at 3:08 p.m.