

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
November 17, 2011

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on November 17, 2011, in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Vice-Chair Connie Larson, Jason Anderson, Hon. Edward Cleary, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, and Yamy Vang. MSGC staff present were Executive Director Kelly Mitchell, Jill Payne, and Anne Wall. Jim Early from the Attorney General's Office was also present.

1. Call to Order.

The meeting was called to order at 2:05 p.m.

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

Motion was made by Yamy Vang and seconded by Jason Anderson to approve the minutes from September 15, 2011.

Motion carried.

3. Prison Tour

In October, Commission members were invited to tour two prison facilities: Stillwater and Oak Park Heights. The Commission briefly discussed that experience, commenting that they were struck by the respect displayed between the staff and inmates.

4. Executive Director's Report.

Kelly Mitchell gave the Executive Director's report.

- In October, the Council on Crime and Justice presented a program entitled *Racial Disparities: Crafting Solutions*. The entire day was devoted to exploring racial disparities in the criminal justice system. Of particular note was a presentation by Professor Richard Frase in which he presented findings that 63% of the disparity in the rates of black offenders sentenced to prison versus white offenders sentenced to prison can be explained by the section of the grid just to the right of the dispositional line. This means that more black offenders committing crimes that rank at a low severity are being sentenced to prison than white offenders because of higher criminal history scores. Commission staff is working with Professor Frase to explore these findings further.
- Also in October, the University Of Minnesota School Of Law launched the Robina Institute of Criminal Law and Criminal Justice. A few Commission

members were able to attend the launch event, which was focused on establishing priorities for the work of the institute. Ms. Mitchell explained that the institute is divided into three focus areas, one of which is sentencing, so it is expected that the Commission will hear more from the institute as it gets up and running.

Motion was made by Commissioner Roy and seconded by John Stuart to invite faculty from the Robina Institute to attend a future meeting and make a formal presentation to the Commission.

Motion carried.

4. 2010 Sentencing Data Overview

Jill Payne presented an overview of the 2010 sentencing data. The data will be included in the annual report to the legislature. On page 9 of the report, Figure 6 reported the distribution of offenders by race and judicial district. Commission members asked if additional information could be included to provide a reference point as to the actual racial makeup of each judicial district. Members also noted the wide variance in incarceration rates by judicial district. One member stated that the difference could be partly explained by the availability (or unavailability) of community correctional programming. It was also noted that the composition of offense types in each district could account for the differences (e.g., if more person crimes were committed within a particular district, the incarceration rate for that district might be higher than in another location). The Commission requested that additional information be included to explain these differences.

5. Draft 2012 Report to the Legislature

Ms. Mitchell briefly reviewed the contents of the draft 2012 MSGC Report to the Legislature. In addition to the 2010 sentencing data overview, the report will contain the amendments to the guidelines that went into effect August 1, 2011, staff activities, and the statutorily mandated County Attorney Firearms Report. In addition, staff has provided draft inserts regarding specific sentencing practices that could also be included in the report. The Commission reviewed each in turn.

- Departures. The Commission reviewed a draft insert regarding departures in 2010. One member noted that the overall 25% departure rate raises a huge quality control concern. Another asked how many departures are the result of plea bargains, stating that it is important to identify the role of plea negotiations in the process because many cases are presented to the court in that format. Another member noted that, at least for drug crimes, many practitioners think the presumptive sentences are simply too high. Here it was mentioned that the discussion was getting into mandatory minimums, which are outside of the guidelines. One member summed up the conversation by stating that the purpose of the guidelines is to have consistency, and these numbers indicate we do not have that. Instead, the sentence a person gets depends on where it is committed.

Motion was made by Commissioner Roy and seconded by John Stuart to include the departure information in the report to the Legislature, with the addition of language to describe the role of plea negotiations in departures.

Members asked if departure information has historically been included in the report, and staff reported that it has not. There was some discussion as to whether the information might cause the Legislature to enact provisions to limit judicial discretion in sentencing. It was noted that the vote today is preliminary; the full report will be reviewed again at the December meeting.

Motion carried.

- Domestic Assault and Restraining Order Offenses. The Commission reviewed a draft insert relating to domestic assault and restraining order offenses. The insert demonstrates that these offenses have increased dramatically in recent years.

Motion was made by Commissioner Roy and seconded by Hon. Edward Cleary to include the domestic assault and restraining order offenses in the report to the legislature.

Motion carried.

- Criminal Sexual Conduct Offenses. Ms. Mitchell explained that criminal sexual conduct offenses have received a great deal of attention in recent years. In 2010, the Legislative Auditor released a report on the civil commitment of sex offenders that revealed that offenders who are civilly committed are housed at great expense, and that treatment has so far been unsuccessful. During the 2011 legislative session, the Legislature proposed several bills to increase sentence lengths for criminal sexual conduct offenders – in some cases, including indeterminate sentences for repeat and egregious offenders – so it is anticipated that the topic will be revisited during the 2012 session. The purpose of this draft insert is to provide the Legislature with information about criminal sexual conduct sentencing up front.

Given that the Legislature may be considering enacting indeterminate sentences for certain sex offenders, the Commission discussed its role in relation to the Legislature. At the September meeting, Jim Early had been asked to provide guidance as to the role of the Commission. At this meeting, he reported that the Legislature sets sentencing policy and the Commission implements it. For example, the Legislature determined that public safety is of paramount concern, and the Commission must work within that framework. A member countered that the sex offender grid was developed by the Commission without direction from the Legislature. Mr. Early agreed, stating that the Legislature has final authority over any such proposals. Another member, quoting from Minn. Stat. § 244.09, which established the Commission, stated that the Commission was established as an independent body to determine sentencing policy. The Commission writes the

sentences unless the Legislature overrides the Commission's proposals or trumps the Commission's actions by establishing a mandatory minimum in statute.

One member expressed that the Commission should not be behind the Legislature on this issue; the Commission has an obligation to use its skill and expertise to make an independent set of recommendations. One member stated that the Commission can offer an opinion regarding any determinate sentences that might be proposed, but that because indeterminate sentences are outside of the guidelines, the Commission cannot comment on that. Another member commented that it may not be the role of the Commission to advocate for determinate sentencing for all offenses. It was also noted that several years ago, the Commission recommended life sentences for certain sex offenders, and that proposal became law.

Motion was made by Commissioner Roy and seconded by Hon. Heidi Schellhas to include the criminal sexual conduct offenses in the report to the legislature.

A member pointed out that the term "true prior" is used within the insert without definition. In addition, the explanations of "total incarceration" and the percentage of individuals sentenced on the sex offender grid need to be clarified.

Motion carried.

6. Other Business

- 2012 Meeting Dates. The Commission will be asked to confirm the meeting dates for 2012 at the December meeting.
- Pew Research Report. Hon. Heidi Schellhas noted that a Pew report on prison population indicated that Minnesota's prison population has increased. One member stated that it would be interested to have a speaker on this topic. Commissioner Roy noted that Grant Duwe, in the DOC Research Division, is very knowledgeable about how Minnesota's prison population compares to prison populations in other states.

7. Public Input

There were no members of the public present.

8. Adjournment

Motion for adjournment was made by Yamy Vang and seconded by Jason Anderson.

Motion carried.

Vice-Chair Larson adjourned the meeting at 3:57 p.m.