

Minnesota Sentencing Guidelines Commission
Meeting Minutes
January 20, 2011

The Commission meeting was held on January 20, 2011, at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Reverend Bob Battle, Judge Edward Cleary, Acting Commissioner of Corrections Chris Bray, Tracy Jenson, and Justice Helen Meyer. Interim Executive Director Jill Payne, MSGC staff members Anne Wall and Kathleen Madland, and Jim Early from the Minnesota Attorney General's Office were also in attendance. Member of the public, Bill Lemons from the Minnesota County Attorneys Association, was also present at the meeting.

1. Call to Order

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

2. Approval of Meeting Minutes from November 18, 2010

Motion was made by Justice Meyer and seconded by Judge Cleary to approve the minutes from November 18, 2010.

Motion approved without dissent.

3. Interim Executive Director's Report

Jill Payne gave her interim executive director's report.

• **Fiscal Notes**

Commission staff received two fiscal note requests to date. House File 6: Presumptive Sentence of 300 Months for First-Degree Criminal Sexual Conduct and House File 57: Sale and Possession of Synthetic Cannaboid. Representative Cornish was the chief author of House File 6, which is a bill that, if passed, would increase the presumptive

sentence for first-degree criminal sexual conduct (CSC) offenders from at least 12 years (144 months) to at least 25 years (300 months). The criminal provisions of this bill are effective August 1, 2011, for crimes committed on or after that date. MSGC monitoring data show that, a total 499 prison beds will be needed by 2041 if the bill passes. MSGC staff member Anne Wall explained how MSGC calculated the impact on state correctional resources. In past years, MSGC had used the previous year's data to analyze the impact of fiscal notes. However, because of the unusually low number of first-degree criminal sexual conduct cases in 2009 (105 cases compared to 140 in 2008), MSGC took a three-year average (127 cases) to project the number of first-degree CSC offenders. Because it is not a strict mandatory minimum, but a change in the presumptive sentence, MSGC applied the existing dispositional departure rate (29%). It is assumed that the Court will continue to pronounce sentences which are mitigated durational departures at the same rate at which they currently do.

Also introduced was House File 57: Sale and Possession of Synthetic Cannaboid. Representative Kriesel was the chief author of this bill, which if passed, would create a new offense for possession and sale of synthetic cannaboid. The sale offense is a gross misdemeanor and the possession offense is a misdemeanor. If passed, this bill would be effective August 1, 2011, and applies to crimes committed on or after that date. Synthetic cannabinoid (sold as K2) mimics cannabis and is sold in local shops by retailers, labeling indicates that it's not for human consumption, but it's widely known (and videos are available explaining) how to ingest it. It is unknown how many new offenses will result from the provisions of this bill. However, it is assumed that most local businesses that may currently sell these substances will not continue to do so. It is unknown how frequently these substances are procured on the internet. Since there is no felony offense in this version of the bill, there will be no impact on state correctional resources. There could be some impact on local jail beds, but MSGC could not predict how many jail beds may be needed since it is unknown how frequently this crime will be detected and prosecuted.

On January 20, 2011, this bill was discussed in the House Crime Prevention Policy and Finance Committee. Members of law enforcement and prosecution testified that they were in favor of this bill and they considered it a dangerous substance especially when it was mixed with alcohol. The BCA did not yet have a method to test for the synthetic cannaboid and discussed how that would affect prosecuting this offense. Also, some House

members raised concern of what local impact that would have. Federal regulations of the synthetic cannabinoid have it listed as a Schedule I drug, but there are no regulations yet at the state level.

- **Agency Overview Presentations to the House and Senate**

The MN House Judiciary Policy and Finance Committee, chaired by Representative Smith, requested a 15 minute overview of the sentencing guidelines, commission and staff, including a brief description of the budget for January 27, 2011.

Interim Executive director Jill Payne and Chair Edblad presented before the MN Senate Judiciary Policy and Finance Committee on January 18, 2011. Chair Edblad gave an overview of the sentencing guidelines, history, trend data, and the commission activities, while Interim Executive Director Jill Payne did an overview of the staff, 2010 staff activities, and the budget. It seemed well received. There was a good deal of interest in the commission and the chair was knowledgeable about what the commission does. The chair also acknowledged the difficulties both corrections and MSGC face in these times of 'diminishing resources.' He also acknowledged the fiscal impact associated with new crime legislation. Members of the committee indicated that they wanted to work closely with the commission this session and get MSGC's insights into such matters as proportionality of sentences.

Justice Meyer asked if the budget has been submitted. Interim Director Payne stated that a budget had not yet been requested. Acting Commissioner of Corrections Chris Bray questioned if the MSGC budget is part of the DOC. Ms. Payne indicated that MSGC has its own general fund budget of 1.12 million for FY10-FY11.

- **Update: Star Tribune Editorial; State Action is Next in Lee Case**

This editorial was a follow-up article to the Koua Fong Lee case which was discussed at previous commission meetings held in October and November of 2010. This editorial highlighted sentencing guidelines' reform and asserted that judges have too much discretion in giving a consecutive sentence verse a concurrent sentence for a single act involving multiple victims. The follow-up article described the commission as being well respected, but discussed the concern that was raised by the Lee case and that the

commission had looked at it but had not made any changes to the consecutive policy.

- **Request for Speaker**

MSGC received a phone call from Professor Jones, who is a professor at William Mitchell College of Law. He was looking for a guest speaker for his practicum class on criminal justice and sentencing, who could discuss the functions of the guidelines and work of the commission before the end of March 2011.

4. Discussion of Vacant Executive Director Position

The job was posted on January 18, 2011, and the initial closing date was January 24, 2011. DOC will provide the initial screening of candidates and disqualify those who do not meet the minimum qualifications. MSGC did not have any update on the candidate pool at this time. Ms. Payne talked to the director of Human Resources, Cathy Fah, and asked if there were standard questions used for interviewing directors. Ms. Fah said that, though there is no standard set of questions, there is a method whereby interview question answers are rated. DOC-HR will help determine appropriate ways to select questions and ratings given the assistance of MSGC staff who are subject matter experts on the sentencing guidelines.

The question was raised about the current commission's authority. Chair Edblad responded that, by statute, Governor Pawlenty's appointees carry over until Governor Dayton selects new appointees. Jim Early from the Attorney General's office agreed. Chair Edblad received an email from the governor's office stating that they would be filling the cabinet-level commissioner spots first, then various commissions and other gubernatorial appointments. Chair Edblad stated that in 2003, under similar conditions, there was a relatively new commission and a vacant executive director position. The Chair was a member of the newly appointed commission and acknowledged that they relied heavily on the guidance of the commission that was in place six months earlier. This new commission may also benefit from the knowledge of the current commission in regard to hiring the executive director. Justice Meyer said that she thought that the executive director hire could potentially be the most important decision made by this commission.

Chair Edblad asked if the February meeting would be too soon to interview. It was concluded that the interviews would be conducted at the February commission meeting.

Reverend Battle asked if the job was made available to all segments of society and if the job was posted by any community based organizations. The position was posted on the official State of Minnesota website, the MSGC website, and the MN County Attorneys Association website. Reverend Battle requested that it be advertised by community-based organizations as well. Ms. Bray suggested that the commission work with DOC's affirmative action department to ensure it was open to a wider minority community.

Motion to extend the application deadline to January 28, 2011, was made by Judge Cleary, seconded by Tracy Jenson.

Motion approved without dissent.

MSGC staff will work with DOC's affirmative action manager to post the position on community-based organizations' websites. Time table has been set to generate an interview list no later than February 4, 2011.

The executive committee of Chair Jeffrey Edblad, Vice Chair Tracy Jenson, Judge Edward Cleary, and Judge Gordon Shumaker will review the applications of candidates meeting the minimum qualifications to determine who will be asked to interview.

5. Public Input

There was no input from members of the public.

6. Adjournment

The next commission meeting is tentatively scheduled for February 17, 2011.

Motion for adjournment was made by Reverend Battle and was seconded by Tracy Jenson.

Motion approved without dissent.

Chair Edblad adjourned the meeting at 3:45 p.m.