

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
July 18, 2013

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on July 18, 2013 in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblud, Jason Anderson, Hon. Christopher Dietzen, Sgt. Paul Ford, Connie Larson, Hon. Carrie Lennon, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, and Sarah Walker. MSGC staff members present were Executive Director Kelly Mitchell, Jackie Braun, Jill Payne, and Anne Wall. Also present were Jim Early from the Attorney General's Office, Brian Marquart from the Minnesota State Association of Narcotics Investigators, Bill Lemons from the Minnesota County Attorney's Association, Kathleen Lonergan from Department of Corrections, and Andrew Morley from St. Thomas.

1. Call to Order.

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

2. Approval of Meeting Minutes from June 5, 2013.

Motion to approve minutes was made by Connie Larson and seconded by Justice Dietzen.

Motion carried.

3. Approval of Modifications to the Guidelines

Chair Edblud reviewed for those present that the Commission held a public hearing on July 11, 2013 to allow for public input concerning the proposed modifications to the Guidelines. No members of the public spoke at the public hearing. No written commentary was received.

Motion to adopt the modifications previously approved by the Commission was made by Commissioner Roy and seconded by Sarah Walker.

Motion carried.

4. Outcomes Study: First- and Second-Degree Controlled Substance Offenders

In April, staff presented the results of a study seeking to demonstrate the types of outcomes experienced by first- and second-degree controlled substance offenders who are sentenced to probation rather than to the presumptive sentence of prison. Following the

presentation of the results of this study, the Commission had several follow up questions, which the staff addressed at this meeting.

Commission members expressed concern about modifying the Guidelines based on three years of data. Staff presented the departure rates for first- and second-degree controlled substance offenses from 1990-2011. The departure rates for first- and second-degree controlled substance offenses have hovered around 60-70% from 1990 to the present.

Members also asked what the original charges were for those sentenced in this study. For those sentenced at first-degree, the original charge was also first-degree. For those sentenced at second-degree, about 37% were originally charged with a first-degree offense. Staff also pointed out that for offenders whose charge was reduced from first- to second-degree, the presumptive prison sentence was imposed at a much higher rate – 55% – as opposed to just 26% for those originally charged with a second-degree offense.

The Commission also requested information on how often a weapon was part of the offense. A weapon was cited for 3% of those who received probation and 4% of those who received prison sentences. Original charges for Felon in Possession of a Firearm were 2% for probationers and 3% for prisoners.

Commission members expressed interest in learning more about what a typical first- and second-degree case looks like. Staff collected complaints for those sentenced for first- and second-degree controlled substances in 2011. Of the cases used in the study, most offenders were white males in their 30s. Sale offenses generally involved at least one transaction and a confidential informant. The drug type was typically meth or cocaine. Offenses generally did not involve either a weapon or children. Those sentenced to probation had lower average criminal history scores, lower average drug amounts, and were less likely to have a prior controlled substance offense than those sentenced to prison. Of those sentenced for a second-degree controlled substance, offenders who were originally charged with a first-degree were significantly more likely to receive the presumptive sentence.

Additional materials related to first- and second-degree controlled substance offenses and sentences were made available for review including a position paper by the Minnesota County Attorney's Association, two previous works the Commission prepared for the Legislature and Minn. Stat. § 244.055: Conditional Release of Nonviolent Drug Offenders. Members clarified that the statute allows for the Commissioner of Corrections to release some controlled substance offenders on conditional release early. It was noted that the statute previously was extremely limited; the scope has been expanded but still will not allow the release of many offenders.

Round Table Format

William Mitchell Law School has expressed interest in working with the Commission to host a round table discussion on the issues the Commission has been discussing. The intent would be to invite stakeholders to present and receive feedback on the study relating to first- and second-degree controlled substance offenses. Staff could present information on current presumptive sentences, departure rates, and the policies used in other states along with possible actions the Commission could take in response to the study.

A member expressed concerned that volume is driving departure rates because plea agreements are necessary to deal with large caseloads with limited resources. Another member stated that if this was purely based on case volume, the departure rates would be consistent across offenses, but the departure rates for first- and second-degree controlled substance offenses are significantly higher than the overall average departure rate. A member stated that this could be in part due to the unique difficulties of prosecuting a controlled substance offense for which there is often less evidence than in other types of offenses.

Commission members Sarah Walker, Sgt. Paul Ford, Jason Anderson, Judge Schellhas, and Jeff Edblad volunteered to participate in a subcommittee to organize the round table.

5. Other Business

MSGC Website Launch

MSGC has launched its new website. The old website will be redirecting to new website on Friday, July 19, 2013.

NASC Conference

The NASC Conference will be held at the University of Minnesota Law School in the first week of August. A reception will be held Sunday evening. Commission members are encouraged to attend.

6. Public Input

There was no additional input from the public.

7. Adjournment

Motion to adjourn was made by Justice Dietzen and seconded by Connie Larson.

Motion carried.

Chair Edblad adjourned the meeting at 3:25 p.m.