

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
May 16, 2013

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on May 16, 2013, in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Chair Jeff Edblad, Jason Anderson, Hon. Christopher Dietzen, Hon. Carrie Lennon, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, and John Stuart. 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, Paul Beaumaster, Rice County Attorney, and Matt Majovski and Hugh Woodford from Dakota County Community Corrections.

1. Call to Order.

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

2. Approval of Meeting Minutes from April 18, 2013.

Motion to approve minutes was made by Hon. Heidi Schellhas and seconded by Jason Anderson.

Motion carried.

3. Other Business

a. Legislative Update

Kelly Mitchell updated the Commission on Legislative news that pertains to the Commission. The Commission's budget has so far been approved for both staff salaries and the additional request for funds to update the Electronic Worksheet System.

The Commission previously sent a letter to the Legislature recommending reinstating language that made repeat sex offenses a presumptive commitment. The Legislature is now considering a bill to add the previous language back into statute and it looks likely that the bill will pass.

The Commission will likely have a few offenses to rank after the Legislative session is complete. Staff will present information on the new offenses to the Commission at the June meeting.

A member informed the Commission that retired Judge Jack Davies is interested in restarting a limited parole board. The proposal would allow a parole board to consider release for a limited group of offenders after half of the sentence has been served. The member requested that the Commission allows Judge Davies to present his proposal to the Commission at some point in the future.

b. Upcoming NASC Conference

The agenda for the 2013 National Association of Sentencing Commissions Conference has been included in the meeting materials. The conference will be held August 4-6 in Minneapolis. The Commission is invited to attend at no cost. The Robina Institute is a co-sponsor of the event and this year's conference will include both academics and practitioners. A member requested that an opportunity for Minnesota Commission members to meet with Commission members from other states be included.

4. Request to Add Offense of Fleeing a Peace Officer to Permissive Consecutive Sentencing List

The Commission received a letter from Paul Beaumaster, the Rice County Attorney requesting that Fleeing a Peace Officer be added to the permissive consecutive list. He informed the Commission that there are regularly cases involving offenders with a high criminal history score who do not face any additional time because the fleeing offense runs concurrent to other longer sentences. Permissive consecutive sentencing would only be applicable in cases where an offender has a criminal history of six or more. Paul Beaumaster and Commission members discussed that offenders may feel that they "have nothing to lose" because the offense is not eligible for consecutive sentencing, therefore there is no risk of additional time being added if caught. Members discussed Minn. Stat. § 609.035, subd. 5 which allows a fleeing offense to be sentenced consecutively to another offense from the same course of conduct. Only ten cases in 2011 that were not already eligible for consecutive sentencing under Minn. Stat. § 609.035, subd. 5 would have been eligible for permissive consecutive sentencing if this change were made.

A member gave an example of a case when an offender was on supervision for a Felony DWI. The offender was seen by peace officers driving while intoxicated, but the offender fled and was not apprehended in time to test for intoxication. In this case there was great incentive to flee because instead of receiving another Felony DWI and a presumptive prison sentence, he received a Severity Level 1 Fleeing a Peace Officer offense.

Motion to add Fleeing a Peace Officer to the permissive consecutive list was made by Commissioner Tom Roy and seconded by Hon. Christopher Dietzen.

A member commented that this offense is similar in risk to reckless driving and this offense is already at a greater severity by being a felony. The member also noted that offenders are unlikely to be deterred by this change because they are not thinking analytically at the time of the offense. The member stated that this since consecutive sentencing would be permissive under this proposal, the Commission would not be giving any direction on when it would be appropriate to apply consecutive sentencing, which could exacerbate sentencing inconsistencies. The member advocated for use of departures for the egregious cases rather than putting this offense on the permissive consecutive sentencing list.

Members noted that offenders who have high criminal history scores are likely to be more aware than an average offender of how offenses will be punished.

Motion carried.

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

The Commission continued discussing the outcomes study of first- and second-degree controlled substance offenders. The Chair asked members to consider ways that the Commission could seek feedback on the results of that study. Kelly Mitchell offered the suggestion of Commission member talking with stakeholders in small groups over the course of the summer. A member proposed a roundtable with specific invitations sent to the stakeholders the Commission is most interested in hearing from. A member noted that the U.S. Attorney's office would likely be able to provide useful insight into how changes in sentencing in Minnesota will affect case decisions by the U.S. Attorney's office. Another member suggested seeking input from civil rights group to gain input on how current controlled substance sentencing affects communities of color. A member recommended including someone with extensive experience with Drug Court.

Members described the history of how drug offenses were ranked in the Guidelines. Powder cocaine had a significantly higher threshold than crack cocaine in 1989 when the two offenses were originally ranked. Later, the threshold for powder cocaine was lowered to match the crack cocaine threshold and heroin and methamphetamine were added. The Guidelines rankings, however, were not changed. The Commission has regularly revisited the issue but has not re-ranked the offenses since that time. Commission members expressed concern over the low threshold amounts compared to other states.

A member noted that she liked the idea of seeking feedback, but felt she needed additional information about actors in the study before doing so. She requested further research into what the original complaint charged to see how many cases were originally charged at sale offenses and then pled down to possession offenses. Another member requested clarification of the issue. Members discussed that the departure rates are

problematic because it appears that the departure rates are influenced by region, that offenders sentenced to probation appear to recidivate at a lower rate than those sentenced to prison, and that the departure rates are so high it appears the presumptive sentence is not being applied to the typical case, but rather, that departures have become the norm. Commission members were asked to send their requests for additional research to staff by the end of May so that staff is able to report back in July. Members requested information from County Attorneys on the differences in sentencing practices in the metro area and Greater Minnesota.

5. Meeting Dates for Summer

The Commission discussed potential dates for the June and July meeting dates, taking into account the rules applicable to notice for the public hearing. A quorum is required for both the June and July Commission meetings. The June meeting date will be set via email to allow for absent Commission members to participate in scheduling.

The Public Hearing will take place on July 11 and the July Commission meeting will take place on July 18.

Motion to cancel August Commission meeting was made by Commissioner Tom Roy. The motion failed for lack of a second.

6. Public Input

Matt Majovski has taken the lead on completing sentencing worksheets at Dakota County Community Corrections for several years but will be retiring soon. He introduced Hugh Woodford who will be taking the lead in the future.

7. Adjournment

Motion for adjournment was made by Hon. Christopher Dietzen and seconded by Jason Anderson.

Motion carried.

Chair Edblad adjourned the meeting at 3:30 p.m.