

## Racial Impact Statement Policy (DRAFT)

*From the Minnesota Sentencing Guidelines Commission*

**Version:** 2.0

**Effective Date:** \_\_\_\_\_

**Approval:** MSGC meeting minutes file

### Reason for the Policy

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The Minnesota Sentencing Guidelines Commission (MSGC), from time to time, receives requests from members of the Minnesota Legislature to prepare racial impact statements examining the impact of proposed crime bills pending before it.

Beginning in 2008, the MSGC voluntarily elected to prepare racial impact statements on some crime bills pending before the Legislature. The racial impact statements prepared by the MSGC generally presented in a table the percentage breakdown by racial group: (1) the state general population, (2) the current felony population, and (3) the current prison population. Additionally, the statement compared staff's predictions of the impact, if any, of the proposed crime bill on the racial composition of the new felony offenders and prison beds to the current felony and prison population

In 2015, MSGC staff requested that the Commission formalize the process of preparing racial impact statements for the Legislature, and clarify the scope and the circumstances under which the statements would be prepared. The MSGC reviewed the matter, and approved the criteria and process set forth in a letter from the Executive Director to the Chair of the MSGC dated April 9, 2015.

A question has arisen regarding whether the MSGC has the statutory power and authority to prepare and provide racial impact statements to the Legislature in the format described above.

Minn. Stat. § 244.09 does not specifically provide the MSGC with the power and authority to prepare and forward racial impact statements to the Legislature. Subdivision 6 does provide authority for the MSGC to serve as a clearinghouse and information center and to conduct ongoing research regarding, among other things, the sentencing guidelines, the use of imprisonment and alternates to imprisonment, and "other matters relating to the improvement of the criminal justice system." *Id.* The statutory language, however, does not authorize the MSGC to analyze proposed crime bills and make predictions regarding the impact of those proposals on the future prison population of certain racial groups. Instead, the target of subd. 6 is the research, collection and analysis of existing MSGC data. Significantly, the Legislature considered in the 2016 and 2017 legislative sessions bills that would provide the MSGC with the statutory authority to prepare racial impact statements. Those bills, however, were not successful in either legislative session.

The MSGC has not formally adopted rules to allow the current MSGC practice of preparing racial impact statements when certain thresholds are met. Minn. Stat. § 14.02, subd. 4 (a rule “means every agency statement of general applicability and future effect ...”). Unless exempted under Minn. Stat. § 14.03, therefore, the practice therefore of preparing racial impact statements for certain crime bills pending before the Minnesota Legislature may constitute improper rule-making in violation of Minn. Stat. Chap. 14.

The Legislature has for many years requested a fiscal note from the MSGC in accordance with Minn. Stat. § 3.98; and the MSGC has provided such fiscal notes when requested by the chair of the standing committee to which a bill has been referred, or the chair of the House of Representatives Ways and Means Committee, or the chair of the Senate Committee on Finance in accordance with Minn. Stat. § 3.98. The MSGC follows the same procedure in preparing and forwarding racial impact statements to the same chairs. Additionally, the MSGC has prepared and forwarded unofficial racial impact statements to other members of the Legislature in accordance with the procedure of unofficial fiscal notes in accord with Minn. Stat. 13.64, subd. 3. See “Fiscal Notes (Updated December 2016)”, Fiscal Analysis Department, Minnesota House of Representatives. It logically follows that the requirements of Minn. Stat. §§ 3.98 and 13.64, subd. 3, regarding the preparation, content and procedure for official and unofficial fiscal notes apply equally to official and unofficial racial impact statements prepared by the MSGC.

Minn. Stat. § 3.98, subd. 2, states that the fiscal note, where possible, shall specify “any long-range implication.” Subd. 2(6). Clearly, the statute is referring to a fiscal long-range implication. See *Heritage Dictionary* at p. 664 (fiscal means “of or relating to government expenditures, revenues and debt”). Significantly, subd. 2(b) states that the fiscal note “shall express no opinions concerning the merits of the proposal.” Minn. Stat. § 3.98, subd. 2(b).

## Policy Statement

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**Authority.** The MSGC lacks the specific authority to voluntarily prepare and forward official or unofficial racial impact statements to the Legislature on proposed crime bills, particularly when the statements express broad and sometimes unfounded opinions. But the MSGC does have the authority under Minn. Stat. § 3.98 and Minn. Stat. § 13.64, subd. 3, to prepare a limited official or unofficial racial impact statement when it is specifically requested by the chairs of the respective committees of the House and Senate or other member of the Legislature in accordance with Minn. Stat. § 3.98. Two reasons support this conclusion. First, Minn. Stat. § 244.09, subd. 6, authorizes the MSGC to collect, analyze and present data regarding sentencing practices and conduct research regarding sentencing to improve the criminal justice system and to make recommendations to the legislature when appropriate. *Id.* But the statute does not authorize the MSGC to examine pending legislation and make predictions regarding the impact of the crime bill on certain racial groups in prison.

The MSGC has the authority to provide facts and data regarding the current state felony and prison population, including the breakdown by numbers and/or percentages of the various racial groups in accord with Minn. Stat. § 244.09, subd. 6. This policy is not intended to limit that authority.

Second, Minn. Stat. § 3.98 and Minn. Stat. § 13.64, subd. 3, does provide the chairs of various committees or other members of the Legislature with the authority to request official or unofficial fiscal notes that address the long-range implication of a bill. It logically follows the Legislature has the authority to request pursuant to those statutes that the MSGC address the long-term implication of a crime bill on the racial population of the state

felony and prison populations. Consequently, the MSGC may prepare a racial impact statement that does not express an opinion regarding the merits of the crime bill when specifically requested by the Legislature. Minn. Stat. § 3.98, subd. 2(b). Indeed, the Legislature may desire racial impact statements for some crime bills, but not others.

**When prepared.** The MSGC therefore will prepare racial impact statements for crime bills pending before the Legislature when specifically requested by the Legislature pursuant to Minn. Stat. § 3.98 or Minn. Stat. § 13.64, subd. 3. The MSGC will not prepare official or unofficial racial impact statements for the Legislature unless specifically requested by the chairs of the appropriate committees of either the House or Senate or other legislator in accordance with Minn. Stat. § 3.98 and Minn. Stat. § 13.64, subd. 3.

**Purpose.** The purpose of a racial impact statement as used herein is to provide the Legislature with a tool to help it evaluate the impact of proposed legislation on racial groups in Minnesota.

**Scope.** When a racial impact statement is specifically requested by the Legislature as described herein the MSGC shall prepare a statement as follows: (1) the statement shall present in a table the percentage breakdown by racial group over the past 3 to 5 years the state general population, the state felony population, and the state prison population. Additionally, (2) the statement may state a limited opinion that estimates the number of offenders by racial group that may be convicted of the new crime bill if enacted and percentage change when compared to the prior years in the table, provided that the opinion has foundational reliability and the underlying scientific evidence is generally accepted in the relevant scientific community within the meaning of Minnesota Rule of Evidence 702.

Put differently, the before-and-after racial group comparison will compare the numbers and percentage by racial group of the prior felony and prison populations on the one hand, and the new felony and prison population estimates on the other hand, provided that such estimates can be calculated in a manner that satisfies Rule 702. Any opinion shall set forth the facts and data upon which the opinion is based. Minn. Rule of Evidence 703. The racial impact statement shall not express any opinions unless the criteria of Rules 702 and 703 are satisfied; and shall not express an opinion “concerning the merits of the proposal.” Minn. Stat. § 3.98, subd. 2(b). Moreover, the statement shall avoid using words or phrases that are argumentative or unclear in their meaning, such as “racial disparity.”

**Process.** When a fiscal impact statement is specifically requested as described herein, the MSGC staff shall promptly notify the MSGC Chair. If the Chair wishes to review and comment on the statement, the Chair shall promptly notify the MSGC Executive Director. If the Chair elects to review and comment the MSGC staff shall complete the draft statement and forward it to the Chair for review no later than 7 days before it is submitted to the Legislature. The Chair shall have the right to review and propose revisions to the statement, including the right to propose additions, deletions and to request additional data. The Chair shall promptly forward any comments to the MSGC staff. Thereafter, the Chair and staff shall discuss the objections and seek to resolve them so that the statement can be timely submitted to the Legislature. In the event the matter cannot be resolved, the dispute shall be determined by the Commission at the next available date.

## Related Information

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This policy supersedes all prior policy statements of the Commission or statements of MSGC staff including, but not limited to, the letter to the Chair from the Executive Director dated April 9, 2015.

## History

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Version	Description	Date
1.0	Racial Impact Statement Policy	3/12/2015
1.1	Racial Impact Statement Policy (Presented to MSGC by staff)	4/9/2015
2.0	Racial Impact Statement Policy (Approved by MSGC)	_____

## Contact

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