

Demographic Impact Statement Policy (DRAFT)

From the Minnesota Sentencing Guidelines Commission

Version: 2.0
Effective Date: _____
Approval: MSGC meeting minutes file

Reason for the Policy

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

Beginning in 2008, the MSGC voluntarily elected to prepare demographic impact statements on proposed crime bills pending before the Legislature. The demographic impact statements prepared by the MSGC—previously referred to as “racial impact statements”—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 the predicted 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. The purpose of a demographic impact statement was to provide the Legislature with a tool to help it evaluate the impact of proposed legislation on demographic groups in the state felony and prison population.

In 2015, MSGC staff requested that the Commission formalize the process of preparing demographic 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.

Minn. Stat. § 244.09 does not specifically provide the MSGC with the power and authority to prepare and forward demographic impact statements to the Legislature. But subdivision 6 does provide the MSGC with the authority to serve as a clearinghouse and information center, and directs the MSGC 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.* Subdivision 6 further provides that the Commission “shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.”

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, and 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 demographic impact statements to the appropriate committee chair.

Additionally, the MSGC has prepared and forwarded unofficial demographic 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.

Minn. Stat. § 3.98, subd. 2, states that the fiscal note, where possible, shall specify “any long-range implication” of a proposed crime bill pending before the committee, 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

Authority. The Commission interprets Minn. Stat. § 244.09, subd. 6, to provide it with the authority to conduct research and make recommendations to the Legislature regarding the potential impact of proposed changes in the criminal code on public safety, which shall be “the primary consideration of the commission,” and consistent with the state policy of promoting fair and rational sentencing. *Id.*, subd. 5. Additionally, the MSGC has the authority under Minn. Stat. § 3.98 and Minn. Stat. § 13.64, subd. 3, to prepare a limited official or unofficial demographic 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.

The Commission believes scientific research conducted in a manner that satisfies Rule 702 of the Rules of Evidence regarding the statistical impact of proposed crime bills on the state felony and prison populations may aid the Legislature in evaluating whether the proposal promotes fair and rational sentencing and public safety. Because statistical data available to the MSGC includes not only race, but also other statistically reliable data, such as gender, the MSGC should prepare a demographic impact statement that examines reasonably reliable and available statistical data such as race and gender. The MSGC may not, however, prepare a demographic impact statement that expresses an opinion regarding the merits of the crime bill. Minn. Stat. § 3.98, subd. 2(b).

When prepared. The MSGC therefore will prepare demographic 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. Additionally, the MSGC will prepare demographic impact statements when the proposed crime bill meets one or more of the following significance thresholds: (a) if the policy changes in the bill likely to increase the number of people convicted of felonies each year would increase the felony population by 50 or more felons annually; (b) if the policy changes in the bill likely to decrease the number of people convicted of felonies each year would decrease the felony population by 50 or more felons annually; (c) if the policy changes in the bill likely to increase the annual need for prison beds would increase the need by 10 prison beds or more; or (d) if the policy changes in the bill likely to decrease the annual need for prison beds would decrease the need by 10 prison beds or more.

Scope. When a demographic impact statement regarding a proposed crime bill is either requested by the Legislature in accordance with Minn. Stat. § 3.98, or satisfies the significance threshold described in the prior paragraph, then MSGC staff shall prepare a demographic impact statement as follows: (1) the statement shall present in a table the percentage breakdown by demographic 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

express a limited opinion that estimates the number of offenders and prisoners by demographic group that may be convicted and imprisoned under 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 demographic group comparison will compare the numbers and percentage by demographic group, as used herein, 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 demographic 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). Likewise, the demographic impact statement shall not express an opinion about the cause of any potential disparate demographic impact that may be identified within the statement, and each statement shall disclaim any intent, on the part of either the MSGC or its staff, to express such an opinion.

Process. When a demographic impact statement is specifically requested by the Legislature or meets the significance threshold 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 demographic impact 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 proposed changes 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

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

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	Demographic Impact Statement Policy (Approved by MSGC)	_____

Contact

sentencing.guidelines@state.mn.us