

To: Members of the Sentencing Guidelines Commission

From: Kelly Lyn Mitchell, Chair

Re: Undertaking a Systematic Review of our Policies

A few weeks ago, we witnessed the death of George Floyd. His death was tragic and unjust, and it has served to expose the many injustices that people of color experience in our community. It has also sparked frank discussions about racial disparity. Though Minnesota is often touted as one of the best places to live in the U.S., that reality is only true if you are white. I'm not originally from Minnesota, but twenty years ago I *chose* to live here because of all the wonderful things this state has to offer. I want Minnesota to be a place where *every* person in our community feels that way, so I've been asking myself what role the Sentencing Guidelines Commission has in moving forward from this point.

The Minnesota Sentencing Guidelines Commission was the first in the nation to adopt the practice of preparing racial impact notes in 2008 to inform the Legislature when proposed changes to the law had the potential to impact some citizens more than others. I have personally witnessed legislative committees taking that information to heart and deciding against proposed changes when they would more harshly affect people who are black.

It's time to turn the microscope on ourselves. Structural racism occurs in part when we take for granted the just nature of our policies; when we assume that the differences we see in outcomes between citizens who are white and citizens who are Black, Native American, Hispanic, or Asian are driven by factors that are beyond our control. But the truth is that some of those differences flow from the policy choices that we make. For that reason, I am calling upon the Sentencing Guidelines Commission to undertake a systematic review of our policies for racial impact; a deliberate analysis to determine whether our policies have a disparate impact by race, and if so, to determine what changes should be made to reduce those affects.

There is no quick fix to the issue of racial disparities in our State. It will take all of our efforts in multiple arenas of state and local policy to begin to address it. Similarly, our review of the Sentencing Guidelines should not be rushed. It will take some time to review our policies and determine their affects. I am not looking for any quick fixes here, nor am I suggesting that this will be a review that we can complete before the next legislative session. What I am suggesting is that there is no time to waste in getting started. I'd like to begin this review now and work on it deliberately and thoughtfully so that when we reach this point next year, we have a clearer view of the role of our Sentencing Guidelines in affecting racial disparities, and thoughtful proposals for addressing those disparities.

When I was first starting out in my career, I worked as a staff attorney in the Judicial Branch, and in that role, I had the pleasure of working in the same division as Deb Dailey, who was, I think the longest serving Executive Director of the Sentencing Guidelines Commission before moving to her position as Research Manager for the Branch. She was a great mentor to me, and some of the words she said to me early in my career have stuck with me and have shaped how I approach my work. She recognized that disparities often already exist at the very start of the court case, brought on by processes that precede court involvement. But then she would say, "We can't change who comes through the door, but we have to ask ourselves, are we making it worse?" I think that's our task with the Sentencing Guidelines.

We can't change the racial makeup of who receives convictions—that's not our role—but we can ask ourselves, are we making it worse?

I am well aware that the enabling statute for the Minnesota Sentencing Guidelines Commission states that our primary consideration should be public safety. I submit to you that racial injustice is a threat to public safety. Criminal justice policies that disproportionately affect specific groups of people have a cascading affect that amplifies disadvantages in all areas of life. We know that people who are convicted of crimes face numerous collateral consequences that affect their ability to complete their education, obtain jobs, and make a decent living. These disadvantages affect not only the person caught up in the criminal justice system, but also their families, and their children. And when our policies concentrate these disadvantages into communities of color, we run the risk of disenfranchising and marginalizing entire communities for generations. To serve public safety, then, is to be parsimonious with our policies; to ensure that we carefully consider the manner in which we are holding people accountable for their crimes, and to recommit to the principle that has been written in our guidelines since the very beginning: "Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons." Minn. Sent. Guidelines § 1.A.2 (2019).

A handwritten signature in black ink, appearing to read 'Kelly Lyn Mitchell', with a stylized, cursive script.

Kelly Lyn Mitchell
Chair, Sentencing Guidelines Commission