

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**September 18, 2014**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on September 18, 2014, in Room 116C, Administration Building; 50 Sherburne Ave.; St. Paul, MN 55155. Commission members present were Chair Jeffrey Edblad, Jason Anderson, Justice Christopher Dietzen, Sergeant Paul Ford, Judge Carrie Lennon, DOC Commissioner Tom Roy, Yamy Vang, and Sarah Walker. MSGC staff members present were Executive Director Nate Reitz, and research staff Anne Wall and Jill Payne. Jim Early from the Attorney General's Office was also present. No members of the public were present.

**1. Call to Order**

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

**2. Approval of Agenda**

**Motion** to approve the meeting agenda was made by Justice Dietzen and seconded by Sergeant Ford.

**Motion carried.**

**3. Approval of Meeting Minutes from July 24, 2014**

**Motion** to approve the meeting minutes was made by Yamy Vang and seconded by Sarah Walker.

**Motion carried.**

**4. Executive Director's Report**

Executive Director Nate Reitz updated the Commission on three subjects.

**A. National Association of Sentencing Commission (NASC) Annual Conference**

The 2014 NASC conference was held at Yale Law School in New Haven, Connecticut. Mr. Reitz described three topics at the conference that were of special interest: Racial disparity, Commissioner of Corrections forum, and risk assessments.

Mr. Reitz said that Professor Cassia Spohn from Arizona State University, School of Criminology and Criminal Justice, spoke on disparity and discrimination in sentencing. Prof. Spohn indicated that flagrant racism had been eliminated, but her research showed unexplained inequities persisted at pretrial detention, in custodial plea offers, and custodial sentences.

Director Reitz said that officials from the Association of State Correctional Administrators (ASCA) spoke about how sentencing policies and reforms affect their work. The organization's director indicated that immediacy, not severity, of sanctions reduces recidivism.

Mr. Reitz noted that Professor Richard Frase's research on criminal history as a proxy for risk showed that most prison beds in Minnesota were taken up by offenders with lengthy criminal history scores rather than by offenders who committed the higher severity-level offenses. Mr. Reitz reported that the Virginia Sentencing Guidelines Commission had formalized a risk-assessment tool for its lowest-risk population providing alternatives to incarceration and Pennsylvania's Commission were developing a risk-assessment model that will present actuarial assessment information to the Court at sentencing as either an aggravating or mitigating consideration.

Finally, Mr. Reitz explained that Dr. Douglas Marlowe presented his risk-and-need profiles and discussed the clinical and supervisory variations required for each profile subtypes. For example, a "high risk/high need" person with an early onset of drug use would need more intensive supervision and pro-social skill training. Dr. Marlowe stressed the importance of giving services to people who were high-risk, not low-risk. Mr. Reitz recounted Dr. Marlowe's "recipe for destroying the social fabric of society": to incarcerate a high-risk population for long periods of time, then to release the members of that population into the community with no supervision.

Mr. Reitz indicated that NASC was considering having its 2015 annual conference in Alaska. He asked members if they thought the location would make for lower attendance. Chair Edblad stated that the Commission supported the idea and would be active and involved. The Chair recalled that a large delegation from Alaska had attended the conference when it was held in Minnesota in 2013.

## **B. Minnesota County Attorney's Association (MCAA) Leadership Forum**

Executive Director Reitz moved on to summarize his presentation to the Minnesota County Attorney's Association Leadership Forum held on September 4, 2014. Mr. Reitz had explained to the Leadership Forum that the Commission's statutory roles contained a blend of legislative and executive functions, and that the Commission's role in changing sentencing policy was both reactive and proactive.

Mr. Reitz presented to the Commission a slide he had also presented at the forum that explained the charge to the Commission in Minn. Stat. § 244.09, subdivision 6. It read, "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 Executive Director suggested that it was within the Commission's advisory role to make a recommendation to the legislature to review Minnesota's laws that mandate life without parole (LWOP) for juvenile offenders committing certain murders (Minn. Stat. § 609.106) or

heinous sex offenses (Minn. Stat. § 609.3455). In 2012, the United States Supreme Court found mandatory LWOP for juveniles to be unconstitutional (*Miller v. Alabama*, 132 U.S. 2455 (2012)).

The Commission reviewed an infographic from the PEW Charitable Trusts that compared imprisonment rate change between 1994 and 2012 to the crime rate change for the same time period. The infographic showed that Minnesota's imprisonment rate had gone up by 86 percent between 1994 and 2004, while the crime rate had gone down by 36 percent from 1994 to 2004. Imprisonment rates from the Bureau of Justice Statistics, National Prisoner Statistics were also reviewed and showed that Minnesota continued to have the second-lowest incarceration rate among states. Incarceration rates had gone from 99 per 100,000 residents in 1994 to 185 per 100,000 residents in 2012.

Members also reviewed an infographic of 2013 State Sentencing and Corrections Trends from the VERA Institute of Justice showing that Minnesota supports the reentry of offenders into the community by passing "Ban the Box" laws.

Finally, Director Reitz, updated the Commission on the two vacancies on the Commission indicating that the Governor is on track to make the appointments at his next appointments' meeting. Commissioner Roy indicated that the appointments will probably be delayed until after November.

## **5. 2013 MN Sentencing Practices Data Summary Presentation**

Senior Research Analyst, Anne Wall, presented the Commission with 2013 Minnesota Sentencing data practices. There were 15,318 felony offenders sentenced in 2013; an overall increase of 0.7 percent. Of the total volume, person offenses accounted for 32 percent, property offenses accounted for 30 percent, and drug offenses accounted for 25 percent. With an increase of 7.6 percent, offenders in the drug category increased the most. Felony DWI offenses went down by 19.2 percent.

The percentage of offenders sentenced who were white has decreased by roughly 25 percent since 1981. This is largely due to an increase in the percentage of black offenders, though the percentage of other minority offenders has also increased (particularly Hispanic offenders). In 2013, the distribution of felony offenders by race/ethnicity was: 58 percent white; 26 percent black; 8 percent American Indian; 5 percent Hispanic; and 3 percent Asian. For comparison purposes, the 2010 U. S. Census data for Minnesota's total population of people ages 18 years and over showed that Minnesota's population is 86.1 percent white, 4.3 percent black; 3.7 percent Hispanic; 3.7 percent Asian; 1 percent American Indian; and 1.2 percent people who identify themselves with two or more races or another race.

Overall, 92.5 percent of felony offenders were incarcerated in either a State prison on an executed sentence (27.4%) or in a local correctional facility as a condition of a stayed sentence (65.1%). This was the highest incarceration rate ever recorded since the implementation of the Guidelines. Rates varied by gender, race, and judicial district.

Rates have consistently been higher for men. In 2013, the rates were 30.3 percent for men and 12.6 percent for women. Rate varies across racial/ethnic groups ranging from 91.3 percent for white offenders to 95.5 percent for Asian offenders. However, there is greater variation by race in the separate rates for prison and local confinement. For example, white offenders were imprisoned at the lowest rate (23.5%); whereas black offenders were imprisoned at the highest rate (34.5%). The 2013 imprisonment rates were the highest ever for whites, blacks, and Hispanics. The imprisonment rate for American Indians was highest in 2009 at 30.9 percent, and reached the highest point for Asians in 1990 at 29 percent. The groups with the lowest imprisonment rates (whites and Asians) have the highest local incarceration rates.

The Second Judicial District, which includes St. Paul, had the highest total incarceration rate (99.5%) and the Third Judicial District, which includes Rochester, had the lowest total incarceration rate (83.3%). This variation continues with respect to the separate rates for prison and local confinement. For example, the Second Judicial District had the highest imprisonment rate (33.3%) and the First Judicial District had the lowest imprisonment rate (20.8%). With regard to use of local confinement, the Tenth Judicial District, which includes the cities of Anoka and Stillwater had the highest rate (72.6%) and the Third Judicial District, which includes the cities of Rochester and Winona had the lowest rate (55.1%).

Commissioner Roy pointed out that variation in incarceration rates by jurisdiction may have more to do with resource issues.

Overall, 72% of felony offenders received the presumptive Guidelines Sentence, but there was variation in the rates depending on race/ethnicity, judicial district, and the type of offense for which the offender was sentenced.

The mitigated dispositional departure rate for offenders presumed to go to prison was higher for women (51%) than men (30.5%). The rates by race/ethnicity ranged from a low of 25.2 percent for Hispanic offenders to a high of 34.7 percent for white offenders. Mitigated dispositional departure rates were highest in the Fifth Judicial District at 44.4 percent and lowest in the Seventh Judicial District and Second Judicial District 24.2 percent and 24.4 percent, respectively.

There was very high mitigated dispositional departure rates among four select offenses. These were offenses that had 50 or more offenders in the category who were presumed to go to prison and the departure rate was over 40 percent; this was compared to the overall mitigated dispositional departure rate of 32 percent. These offenses were: Assault in the second degree at 60 percent; failure to register as a sex offender at 46 percent; aggravated robbery in the first degree at 42 percent; and burglary in the first degree (with a weapon or assault) at 41 percent.

There was also six offenses selected because they had higher than average combined mitigated dispositional and mitigated duration departure rates. These offenses had 50 or more offenders in the category who were presumed to go to prison. 44 percent got both the presumptive disposition and the presumptive duration vs. the overall rate of 48 percent who received the

presumptive sentence. These offenses were: Assault in the second degree at 28 percent; failure to register as a sex offender at 28 percent; first-degree controlled substance offense at 36 percent; aggravated robbery in the first degree at 37 percent; burglary in the first degree (with a weapon or assault) at 44 percent; and fifth-degree controlled substance offense at 44 percent.

Ms. Wall concluded her presentation by saying that the Commission's website included detailed data reports in addition to the overall monitoring data summary report. These reports will be available sometime in October and November.

#### **6. Response to Commissioner's Question: Comparing MN Guidelines to Federal Guidelines for Controlled Substance Trafficking Offenses**

Mr. Reitz reminded members that at the July meeting, the Commission expressed interest in a fuller exposition of the 2014 changes to the U.S. Sentencing Guidelines with respect to drug offenses, and to relate those changes to the Minnesota Sentencing Guidelines. Mr. Reitz gave a presentation demonstrating these differences. Stepping back, the Commission reviewed what the United States Sentencing Guidelines Commission changed, and why. In April 2014, the United States Sentencing Commission reduced drug trafficking severity levels by two levels. In July 2014, the United States Sentencing Commission made the April 2014 guidelines reductions retroactive. USSC estimates 46,000 offenders may benefit from retroactive application, and the average sentence reduction would be approximately 18 percent (25 months). Like the initial change, retroactivity was intended to address federal prison cost and overcapacity issues. It will go into effect November 1, 2015.

Mr. Reitz then related the revisions in the U.S. Sentencing Guidelines to Minnesota's first-through third-degree controlled substance sale offenses. Minnesota's first- and second-degree offenses are the only two presumptive prison drug-sale offenses at a severity level zero, with no aggravating or mitigating factors, whereas the U.S. Guidelines have 13 such rows that apply to drug sale offenses. Minnesota distinguishes cocaine, heroin, methamphetamine, opiates, PCP, hallucinogen, and marijuana while the federal system distinguishes over one dozen drugs. The U.S. Guidelines sometimes make distinctions based on purity of the drug, as well: Minnesota does not. Finally, the U.S. Guidelines are advisory whereas Minnesota's Guidelines are mandatory in the absence of judicial findings justifying departure.

Mr. Reitz explained that, to simplify the comparison, it was assumed both a federal offender and a Minnesota offender had no criminal history and no aggravating or mitigating factors. After finding equivalent grid rows on the two sets of sentencing guidelines for such an offender, a comparison was made of the various types and amounts of controlled substances in each of the two sentencing schemes, although some challenges with this method were noted.

Upon comparing Minnesota's 3<sup>rd</sup>-Degree Drug Sale (severity level 6) with U.S. offense level 12, Minnesota's 2<sup>nd</sup>-Degree Drug Sale (severity level 8) with U.S. offense level 22, and Minnesota's 1<sup>st</sup>-Degree Drug Sale (severity level 9) with U.S. offense level 28, Mr. Reitz concluded Minnesota's controlled substance threshold cutoffs for cocaine, heroin, amphetamine,

methamphetamine, hydrocodone, and marijuana were lower than the new federal cutoffs. Minnesota's threshold cutoffs for LSD are generally higher than the new federal cutoffs. Minnesota's top tier controlled substance sale encompassed a broader weight range than the federal guidelines. The U.S. Sentencing Commission likely has greater flexibility to make direct changes to the weight ranges than the MSGC.

## **7. Public Input**

The Chair noted that there were no members of the public in attendance at any time during the meeting.

## **8. Adjournment**

**Motion** to adjourn was made by Justice Dietzen and seconded by Jason Anderson.

**Motion carried.**

The meeting adjourned at 3:55 p.m.