

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
December 19, 2013

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on December 19, 2013 in Minnesota Judicial Center, Supreme Court Conference Room; Rev. Dr. Martin Luther King Jr. Blvd; St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblad, Jason Anderson, Hon. Christopher Dietzen, Sgt. Paul Ford, Connie Larson, DOC Commissioner Tom Roy, Hon. Heidi Schellhas, John Stuart, and Yamy Vang. 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, Bill Lemons from the Minnesota County Attorney's Association, Kathleen Lonergan from Department of Corrections, and Robin Wolpert from the Washington County Attorney's Office.

1. Call to Order.

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

2. Approval of Meeting Minutes from November 21, 2013.

Motion to approve minutes was made by Connie Larson and seconded by Jason Anderson.

Motion carried.

3. Approval of Legislative Report

The report was reviewed by Commission members between the November meeting and the week prior to the December Commission meeting. Several changes were made to the original draft based on the feedback of the Commission members. In addition to the changes included in the draft distributed at the meeting, a member proposed a revision to the third bullet of the introduction to better describe the concept of proportionality as follows:

- To establish **proportionality** in sentencing ~~by emphasizing a "just deserts" philosophy. Offenders convicted of serious violent offenses (even with no prior record), those with repeat violent records, and those with more extensive non-violent criminal records are recommended the most severe penalties. The severity of the sanction should increase in direct proportion to an increase in the offense severity or the convicted felon's criminal history, or both.~~

Motion to approve the Legislative Report as amended was made by Commissioner Tom Roy and seconded by Justice Christopher Dietzen.

A member noted that the page numbers appear to be incorrect in the table of contents. Jackie Braun clarified it is likely due to the report being in track changes and will be checked again to ensure the page numbers are correct after the changes have been approved.

A member asked why information on crime rates is no longer included. It was clarified that the data available is national data that would require significant calculations to be included and would also not be based on the current year.

Motion carried.

Chair Edblad thanked the staff for their work.

4. Sex Offender Sentencing and Civil Commitment

Summary of Sex Offender Civil Commitment Task Force Work and

Recommendations: Kelly Mitchell updated the Commission on the recommendations from the Sex Offender Civil Commitment Task Force. This task force was formed to address concerns that the treatment program currently in place for civilly committed sex offenders is more like incarceration than treatment and therefore may be unconstitutional. The Task Force recommendations are the result of discussions which took place over the past year and a half. The Task Force issued its first report last year, and at the time, the recommendation to the Legislature was to fund less restrictive alternatives to civil commitment. This report builds on that initial work, and addresses the process and procedures for civil commitment. One of the primary recommendations is that the process for commitment be bifurcated so that the court would first determine whether the offender meets the standard for commitment, and if so what placement would be most appropriate for the individual. Additionally, the Task Force recommended creating an independent body with expertise about sex offenders to make the initial screening determinations, and to make decisions about decreased custody and release. The Task Force did not make any recommendations regarding sentencing other than to support the expansion of sex offender treatment for inmates.

A member asked if commitment petitions would be limited to those who received the maximum presumptive sentence per the Sentencing Guidelines. The Task Force did not discuss this issue. It was stated that there are roughly 50 committed patients who have no adult criminal convictions and that the criminal records of those with convictions vary greatly. The assessment of whether civil commitment is appropriate generally takes place as a person is leaving prison rather than at the same time as criminal sentencing.

A member asked if there were any recommendations from the Task Force that would address the people already committed. Currently, patients must request a review for

release; the Task Force recommended a regular review cycle for everyone. If less restrictive alternatives are identified and funded, they would be available to currently committed individuals to step down to a lower level of supervision. Another member asked if age was considered in the recommendations. There was some discussion about capping the duration a patient could be committed, but no recommendation was developed to address age outside of regular reviews of patients and less restrictive alternatives so that those who can be released would have a place to go.

Kelly Mitchell clarified for members how commitment has increased since the creation of the program. The number of offenders referred to commitment increased dramatically following the murder of Dru Sjodin. The number of offenders referred has leveled off at approximately 150 per year, which is higher than early on, but lower than immediately after Dru Sjodin's murder.

Events Resulting in Changes to the Sentencing Laws: Chair Edblad presented information on past work done by the Commission which led to the creation of the Sex Offender Grid. The Legislature created mandatory minimums for the most serious sex offenses starting in 2000. After the Blakely decision, sentencing offenders to upward departures became more difficult. Prior to the Sex Offender Grid, the presumptive sentences were not in line with practice. With the Sex Offender Grid there is more determinant sentencing. In the future, the Legislature will likely be discussing the possibility of changing sentencing policies relating to sex offenders and the Commission may be asked to give a recommendation.

A member posed the question of whether there is something wrong with the treatment program or are the offenders untreatable. Members discussed how those who are civilly committed vary greatly and their treatment needs will also vary greatly. Rigorous assessment is needed to determine how best to provide treatment for the individual. Members also discussed proportionality; there have been past proposals which would have sentenced sex offenses to similar durations as intentional murder. It was explained that indeterminate sentencing, sentencing without an exact release date, will likely be considered and could include a minimum duration that must be served before parole is considered. Members discussed that a potential benefit of indeterminate sentencing is that offenders would be more motivated to engage in treatment in order to be released after the minimum duration has been served.

Overview of Sex Offender Sentencing: Kelly Mitchell presented information on the current offense definitions for criminal sexual conduct and on the sentencing enhancements enacted by the Legislature for sex offenses over time. She also presented sentencing data for sex offenses. The number of offenders sentenced for First- through Fifth-Degree Criminal Sexual Conduct has been relatively stable with roughly 500-600 offenders sentenced annually.

Minimum presumptive sentences have increased for sex offenses. First-Degree Criminal Sexual Conduct had a presumptive sentence of 43 months with a criminal history score of zero prior to 1999. Sentencing enhancements over time have increased this duration to 144 months. The Sex Offender Grid, in addition to having specialized durations based on the severity of sex offenses, weights prior sex offenses more heavily than the Standard Grid. This will result in a higher criminal history scores for repeat sex offenders.

A member noted that the recidivism rate for sex offenders is low, with an average recidivism rate of about 6%. A member asked how the longer durations have affected civil commitment. Members noted that those being committed are generally offenders who have completed their sentence and not necessarily sentenced to the longer durations shown in the Sex Offender Grid.

5. Executive Director Report

Electronic Worksheet System is being redesigned. The new version is projected to begin rolling out in May of 2014. The new system will increase accuracy and reduce work for MSGC staff.

Recap Reports have been released. These are based on longer, offense specific reports that have been prepared in the past. The new format is intended to make the report more user friendly. The first two Recap Reports can be found on the MSGC website.

2014 Tentative Meeting Calendar has been included.

6. Public Input

There was no input from the public.

7. Farewell to Connie Larson

Connie Larson has resigned from the Commission after 13 years of service. Chair Edblad thanked her for her service and highlighted the numerous projects she has been a part of during her time on the Commission.

Connie Larson expressed her thanks and stated that it was an honor to serve on the Commission as a member of the public. She mentioned she was particularly proud of the work the Commission had done with the Sex Offender Grid. Connie Larson expressed hope that the Commission will continue to consider controlled substance offenses as it has been an issue for at least 13 years. She believes Minnesota wants the most violent offenders in prison and the non-violent offenders out. She stated that it hurts drug offenders to go to prison and it hurts our society. Sex offenders now have longer sentences but there needs to be a give and take.

8. Adjournment

Motion to adjourn was made by Connie Larson and seconded by Hon. Heidi Schellhas.

Motion carried.

Chair Edblad adjourned the meeting at 4:00 p.m.