

Demographic Impact Statement Policy

From the Minnesota Sentencing Guidelines Commission

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Approval: MSGC meeting minutes on file

Reason for the Policy

The Minnesota Sentencing Guidelines Commission (“MSGC” or “the Commission”), 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, MSGC staff voluntarily elected to prepare demographic impact statements on proposed crime bills pending before the Legislature. The demographic impact statements prepared by MSGC staff—then 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, the Commission, at staff’s request, reviewed and approved staff’s criteria and process for preparing demographic impact statements (set forth in a letter dated April 9, 2015, from the Executive Director to the Commission Chair), a policy the Commission has subsequently updated.

Although it does not specifically authorize demographic impact statements, Minn. Stat. § 244.09, subd. 6, does direct the MSGC to serve as a clearinghouse and information center for sentencing practices data, and requires it 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.” 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 required MSGC staff to participate in the fiscal-note preparation process in accordance with Minn. Stat. § 3.98; and, in accordance with that statute, MSGC staff have 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. MSGC staff follow a similar procedure in preparing and forwarding demographic impact statements to the Legislature. Additionally, MSGC staff have prepared and forwarded unofficial demographic impact statements to

members of the Legislature in a manner similar to the procedure of unofficial fiscal notes in accord with Minn. Stat. 13.64, subd. 3.

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 requested by the Legislature or MSGC staff becomes aware that a proposed crime bill 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. At the beginning of each annual legislative session, the Executive Director will remind the Commission of this policy and ask if any member of the Commission wishes to review and comment on any demographic impact statement prepared during the session. Staff shall attempt to complete each draft demographic impact statement and forward it to all requesting member(s) not later than 7 days before the next scheduled or anticipated committee hearing or legislative action on the bill or its companion. The requesting member(s) will have the right promptly to propose changes, and staff will promptly discuss those proposals with the requesting member(s) and seek to resolve them before the statement is submitted to the Legislature. The Executive Director may shorten or waive this review process and its timeline if necessary to get the demographic impact statement to the Legislature before the next hearing or legislative action. After the review process, the completed demographic impact statement will then be submitted to the chairs and ranking minority members of the standing committees in the House of Representatives and the Senate with primary jurisdiction over felony crime; to the chief House and Senate authors of the bill and its companion; if applicable, to the legislator who requested the demographic impact statement; and to the Commission at its next meeting. The issuance of a demographic impact statement by MSGC staff is final unless it is withdrawn or changed by majority vote of the Commission at its next meeting.

A demographic impact statement need not be prepared if, in light of legislative deadlines, the bill is no longer viable. If a demographic impact statement is not prepared—whether for this reason or because it could not be prepared in a manner that satisfied Rule 702—the MSGC Executive Director shall prepare and file in agency records a memorandum detailing the reasons why the demographic impact statement was not prepared. If the demographic impact statement was requested by the Legislature, the Executive Director shall forward the memorandum to the requestor(s).

Related Information

This policy supersedes all prior policy statements of the Commission or statements of MSGC staff.

History

Version	Description	Date
1.0	Racial Impact Statement Policy	3/12/2015
1.1	Racial Impact Statement Policy (Presented to the Commission by MSGC staff)	4/9/2015
2.0	Demographic Impact Statement Policy (Approved by the Commission)	12/14/2017
2.1	Demographic Impact Statement Policy (Approved by the Commission)	2/9/2023

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