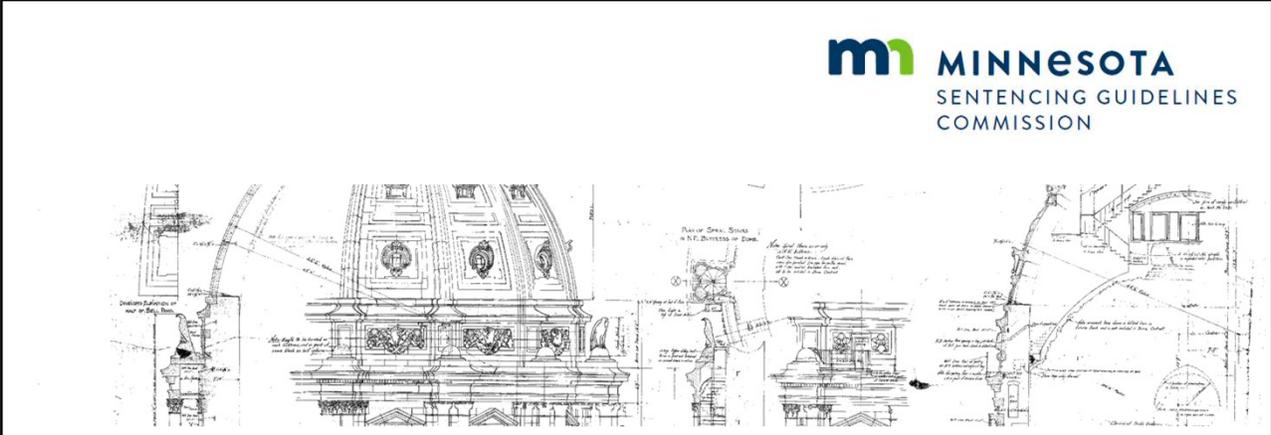




mn MINNESOTA
SENTENCING GUIDELINES
COMMISSION

Report of the Sentencing Guidelines Commission

February 11, 2020
 Kelly Lyn Mitchell, MSGC Chair • Nate Reitz, MSGC Executive Director
 House Public Safety & Criminal Justice Reform Finance & Policy Division
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SENTENCING GUIDELINES
COMMISSION

Structure of the Sentencing Guidelines Commission

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In 1978, the Legislature Created the Commission to—

Establish Sentencing Guidelines for the district court

Serve as a clearinghouse and information center with respect to state and local sentencing practices data

Meet as necessary for the purpose of modifying and improving those Guidelines

Conduct ongoing research on various matters related to the improvement of the criminal justice system

Report to the Legislature on such modifications annually

Make recommendations to the Legislature regarding changes in criminal law & procedure & other aspects of sentencing

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Statutory Features of the Sentencing Guidelines

| MANDATORY | OPTIONAL |
|---|---|
| <p>Sentencing Guidelines must—</p> <ul style="list-style-type: none"> • Establish the circumstances under which imprisonment is proper • Establish a presumptive sentence when imprisonment is proper | <p>Sentencing Guidelines may—</p> <ul style="list-style-type: none"> • Establish appropriate sanctions for offenders for whom imprisonment is not proper • Included within the scope of these sanctions: “probation and the conditions thereof” |

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Distribution of Sentencing Authority

| LEGISLATURE | COMMISSION | JUDGES |
|---|---|---|
| <ul style="list-style-type: none">• Establish broad policy standards & statutory maximums• Review Guidelines | <ul style="list-style-type: none">• Establish advisory Guidelines to the district court | <ul style="list-style-type: none">• Impose real-time sentences for felons |

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Members Represent Criminal Justice System and Public

| | | |
|--|--|--|
|  Supreme Court |  Court of Appeals |  District Court |
|  Public Defenders |  County Attorneys | |
|  Corrections |  Police |  Probation |
|  Public (Crime Victims) |  Public |  Public |

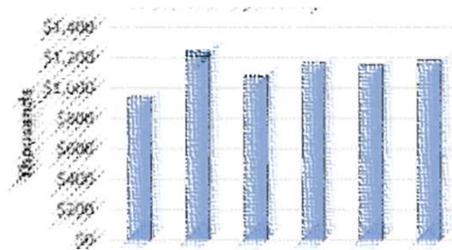
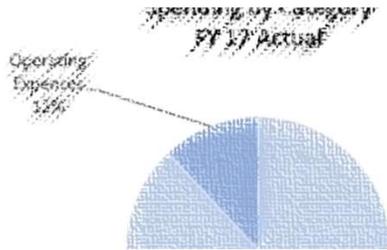
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“A major goal of a guidelines system designed and monitored by an **independent sentencing commission** is to ensure that sentencing policy formulation and modification is data driven, comprehensive across crimes and judicial districts, and insulated from short-term political pressures.”

– Prof. Richard Frase, “Sentencing Guidelines in Minnesota, 1978–2003,”
32 Crime & Just. 131 (2005)

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Agency Budget

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Although Low and Stable, Staffing Drives Agency Budget



- Compensation ≈ 90% of budget
- No personnel changes since 2017
- Compared with 2012, in 2020—
 - Same number of positions
 - Positions at static promotion level
 - In 4 of 6 positions: Personnel stability
- Now: only 3.3 staff per 10,000 felony cases sentenced annually

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Highlights of the 2020 Report to the Legislature

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Commission Activities

Several Sentencing Guidelines changes

- 2019 – Significant changes to criminal history score calculation
- Proposed in 2020 – For most felonies, 5-year presumptive cap on probation length

One recommendation to the Legislature

- Define minimum imprisonment term for Murder of Unborn Child in First Degree

Ongoing work

- Includes mandated review of how the Guidelines treat Child Pornography offenses

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2018 Sentencing Practices Data

- 2018 stopped a 7-year growth trend in felonies sentenced
 - But 2018 volume—18,284 cases—was just shy of 2017's record high
- Drug case volume shrank for the first year since 2010
 - But still 66% more cases than in 2010
- Women accounted for 20% of case volume for the first time ever
- The 2018 mitigated dispositional departure rate was 38.3 percent
 - This is the rate of stayed sentences given when the Guidelines recommended a prison commitment
 - 38.3 percent was the highest rate ever
 - MSGC “2018 Sentencing Practices” report
- Departure rates varied by gender, race/ethnicity, and geography

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Impact of the 2016 Drug Sentencing Reform Act

CASE VOLUME RISES

- We looked at offenses committed and sentenced in comparable time periods, pre- and post-DSRA
- There were more felony drug offenses committed post-DSRA—but there would have been *far* more cases without the gross misdemeanor (first-time trace possession) provision

PRISON-BED DEMAND FALLS

- Even with more cases, the post-DSRA group required 7 percent fewer estimated prison beds
- We estimate that, if the post-DSRA cases had been sentenced the way cases were sentenced in 2015, they would have required well over 1,000 more estimated prison beds on an annual basis

SOME THINGS CHANGE, SOME STAY THE SAME

- Post-DSRA, prosecutors are using “zone” enhancements more
 - But this is not geographically uniform
- Stays of adjudication have become more popular
- Methamphetamine continues to dominate (64.5% of post-DSRA felonies)

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County Attorney Firearms Reports

- County attorneys must report to MSGC the disposition of firearms cases subject to the mandatory minimums of Minn. Stat. § 609.11
- In FY19, they reported disposing of 1,274 such cases, a record high
- Of the 767 such cases in which the defendant was convicted and a firearm was established on the record, county attorneys reported that the mandatory minimum was imposed and executed in 458 cases
- The statute specifically authorizes the prosecutor and/or the judge to waive the mandatory minimum, which is either three or five years in prison

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Guidelines Related to Probation

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Historical Background

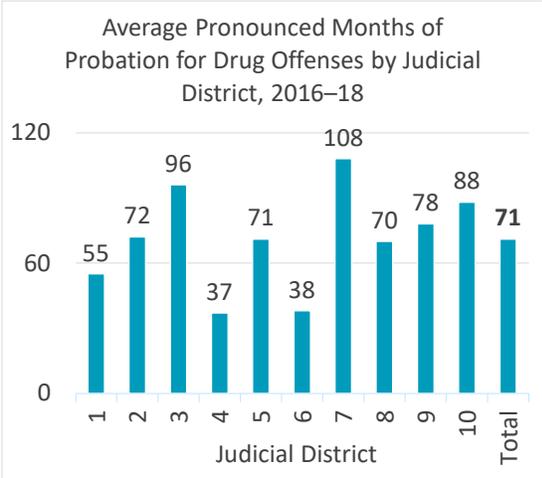
- 1978: Legislature authorizes MSGC to include nonimprisonment/probation guidelines within Sentencing Guidelines
- 1979–80: MSGC issues Sentencing Guidelines without nonimprisonment guidelines
- 1982–83: MSGC considers, decides against jail guidelines
- 1988–89: At legislative directive, MSGC considers, but decides against, various types of nonimprisonment guidelines, including structuring probation lengths
- 2018–19: MSGC revisits the issue of structuring probation lengths

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Commission’s Review of Probation Data

- The Commission studied wide geographical variation in pronounced periods of probation
 - *Actual* probation lengths may differ
- Most probation revocations occur, if at all, within the first two years of receiving probation
- Only one percent of probationers are revoked after five years of probation



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Commission’s Proposed Probation Guideline

- Unless the Legislature by law provides otherwise, effective for crimes committed on or after August 1, 2020—
- There will be a **presumptive limit of five years for felony probation lengths**
- Judges may depart from this guideline based upon a finding of substantial and compelling reasons to do so
- This guideline does not apply to specified homicide and criminal sexual conduct offenses

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