A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on November 9, 2017, in the Lady Slipper Conference Room of the Centennial Office Building, 658 Cedar Street, Ground Floor; St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Commission Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Valerie Estrada, Commander Paul Ford, Cathryn Middlebrook, Peter Orput, Commissioner of Corrections Tom Roy, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Nicole Jasperson, Kathleen Madland, Jill Payne and Anne Wall.

Members of the public present included Marquita Clardy and Mariana Schunk, Parents of Murdered Children – Minnesota Hope Chapter; Kevin Featherly, Minnesota Lawyer; Lisa Netzer, Minn. Department of Corrections; and Robert Small, Executive Director of the Minn. County Attorneys Association.

1. **Call to Order**

   Chair Dietzen called the meeting to order at 2:00 p.m.

2. **Approval of Agenda**

   This was on the agenda as an action item.

   **Motion** by Mr. Orput and second by Vice-Chair Schellhas to approve the meeting agenda, as amended.

   **Motion carried** unanimously.

3. **Approval of Meeting Minutes**

   This was on the agenda as an action item.

   **Motion** by Ms. Estrada and second by Commander Ford to approve the draft meeting minutes from October 12, 2017.

   **Motion carried** unanimously.
4. **Modifications to the Sentencing Guidelines: Offenses Involving a Dangerous Weapon-Application of Mandatory Sentences (Comment 2.E.03)**

This was on the agenda as a possible action item.

Chair Dietzen called on Executive Director Reitz who reminded Commission members that this was discussed at the meeting on September 14, 2017.

Executive Director Reitz directed members to the revised discussion document that outlined four additional offenses that should be considered for inclusion in the Comment 2.E.03: Controlled substance crime in the first or second degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) (first-degree sale, 10 or more grams of cocaine or meth with a firearm) or 2(a)(2)(i) (first-degree possession, 25 or more grams of cocaine or meth with a firearm), or Minn. Stat. § 152.022, subd. 1(2)(i) (second-degree sale, 3 or more grams of cocaine or meth with a firearm) or 2(a)(2)(i) (second-degree possession, 10 or more grams of cocaine or meth with a firearm).

Executive Director Reitz offered draft language for the Commission to consider.

**Motion** by Commissioner Roy and second by Vice-Chair Schellhas to move that the Commission give public notice of its intent to correct the list of offenses in Guidelines Comment 2.E.03 that, by definition, involve a firearm, and report the proposal in the Commission's 2018 *Report to the Legislature*, as follows.

**Motion carried** unanimously.

**[Section 2.]E. Mandatory Sentences**

* * *

**2.E.03.** Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: **Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minn. Stat. § 152.021, subd. 2b(1); Controlled Substance Crime in the First or Second Degree with a Firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66; and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3). The presumptive disposition for these types of
5. Statement of Purpose and Principles

This was on the agenda as a possible action item.

Chair Dietzen called on Executive Director Reitz who reminded members that the issue was introduced at the October meeting where the Commission discussed its statement of purpose and principles in Guidelines § 1.A, and whether or not to change it to incorporate changes made to Minn. Stat. § 244.09, subd. 5. Chair Dietzen presented changes to Minnesota Sentencing Guidelines § 2.A., “Statement of Purpose and Principles,” as originally suggested by the Chair, with further edits made in light of discussion at the Commission’s October 12, 2017, meeting.

Motion by Mr. Orput and second by Commander Ford to move that the Commission give public notice of its intent to modify Guidelines § 1.A, to incorporate changes made to Minn. Stat. § 244.09, subd. 5, and report the proposal in the Commission’s 2018 Report to the Legislature, as follows.

Motion carried unanimously.

[Section 1.A] A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender’s criminal history. Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant sentencing criteria substantially different from a typical case should receive different sanctions.

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission’s primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.

2. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
2.3. The severity of the sanction should increase in direct proportion to an
increase in offense severity or the convicted felon's criminal history, or both.
This promotes a rational and consistent sentencing policy.

3.4. Commitment to the Commissioner of Corrections is the most severe
sanction that can be imposed for a felony conviction, but it is not the only
significant sanction available to the court.

4.5. Because state and local correctional facility capacity is finite, confinement
should be imposed only for offenders who are convicted of more serious
offenses or who have longer criminal histories. To ensure such usage of
finite resources, sanctions used in sentencing convicted felons should be
the least restrictive necessary to achieve the purposes of the sentence.

5.6. Although the Sentencing Guidelines are advisory to the court, the
presumptive sentences are deemed appropriate for the felonies covered by
them. Therefore, departures from the presumptive sentences established in
the Sentencing Guidelines should be made only when substantial and
compelling circumstances can be identified and articulated. * * *

6. **Demographic Impact Statement Policy**

This was on the agenda as a discussion item. Chair Dietzen said that since it was last on
the agenda he had worked with Commission members to build consensus, and as a
result, a revised draft Demographic Impact Statement Policy (version 2.0) was
presented.

The Commission talked at length about the draft changes to the policy. Specifically, the
Commission talked about whether the Demographic Impact Statements were
expressing an opinion if the conclusion was that proposed legislation would “likely”
have a “racially disparate impact.” Judge Wernick asked that the minutes reflect that he
disagreed that the term “racially disparate impact” implied that the impact was
intentional. A member stated that the policy changes were drafted in a way that were
meant to take the “cause” and “effect” out of the Demographic Impact Statements and
simply report the facts.

Version 2.0 of the draft policy would provide that a statement accompany each
Demographic Impact Statement disclaiming any intent on the part of MSGC or its staff to
express an opinion on any potential disparate demographic impact. A member had a
concern about the new review process—it being by only the Commission Chair versus
the entire Commission—expressing concern that this process was not transparent.
Executive Director Reitz noted that, because this item was not listed on the agenda as a “possible action” item, the public may not have been placed on notice that the Commission may take action at today’s meeting. The Commission tabled the item until the December 14, 2017, Commission meeting.

7. **Draft 2018 Report to the Legislature**

This was on the agenda as a presentation and discussion item.

**A. Review**

Chair Dietzen called on Executive Director Reitz who presented a draft 2018 *Report to the Legislature* dated November 2, 2017. Executive Director Reitz went through the introduction, executive summary, and the section on the Commission’s activities in 2017 (including modifications to the sentencing guidelines, proposed modifications to the sentencing guidelines, and staff activities).

Executive Director Reitz turned over the presentation to Senior Research Analysis Specialist Anne Wall and Research Analyst Intermediate Kathleen Madland who presented the 2016 sentencing practices data summary section.

**B. 2016 Sentencing Data Presentation**

Ms. Madland reported the following: Minnesota’s District Courts sentenced 16,927 felons in 2016 which was an increase of one percent over 2015; the largest increase was found in the “drug” category at 11.4 percent; 58 percent of offenders sentenced were white, 25 percent were black, 9 percent were American Indian, 5 percent were Hispanic, and 3 percent were Asian; the largest populations of black offenders were in the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County), where black offenders made up just under half of the offenders sentenced in Ramsey County and over half in Hennepin County; 92 percent of felony offenders served some time in a local correctional facility or prison setting (Total Incarceration): 67 percent served time in a local correctional facility as part of their stayed sentence (Local Correctional Facility) and a little over 25 percent were sentenced to a state prison facility (State Prison); imprisonment rates varied across gender, race and judicial districts; the average pronounced prison sentence was 46 months; 74 percent of all felony offenders sentenced received the presumptive Guidelines sentence and remaining 26 percent received some type of departure.

The Commission discussed the data presentation and asked questions of staff. Executive Director Reitz resumed the presentation of the remaining section of the draft 2018
Report to the Legislature, which was the County Attorney firearms reports. The Commission made suggested revisions to the report.

Executive Director Reitz said that the next draft of the report will be presented to the Commission at its December 14, 2017, meeting which will include a section on the impact of the 2016 Drug Sentencing Reform Act, and 2016 data from the Bureau of Justice Statistics (BJS) on imprisonment rates of sentenced prisoners to be included in the report.

8. Director’s Report

Chair Dietzen called on Executive Director Reitz who reported on the following items: 1) Nicole Jasperson, the newest member of the MSGC team, has filled the Research Analyst vacancy; 2) A quorum of the Commission will be present at the Robina conference on December 8, 2017, and members should avoid violations of the Open Meeting Law; 3) The starting time for the December 12, 2017, meeting may need to be moved up by thirty minutes; and 4) To date, the Commission has received four applications for the peace officer seat that will be vacated by Commander Ford effective immediately after this meeting adjourns.

Commission members who were present informally agreed that they would prefer to begin future meetings beginning at 1:30 p.m.

9. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak.

Mariana Schunk from Parents of Murdered Children (POMC) – Minnesota Hope Chapter addressed the Commission and noted that, while membership of most Commission appointments are based on qualifications for the position, membership to POMC was based on loss. Ms. Schunk asked the Commission to present the proposed serious violent offender grid policy to the Legislature. Ms. Schunk opined that the proposal would improve public safety and would lessen membership to her organization.

Chair Dietzen thanked Ms. Schunk for speaking before the Commission and stated that the Commission has made serious violent offenders part of its agenda by way of the criminal history score discussion.

A member of the public asked whether the statistics reported by the Commission included juveniles. Executive Director Reitz explained that the Commission’s data included juveniles only to the extent a juvenile was certified to adult court or was a
juvenile who was designated as an extended jurisdiction juvenile and the juvenile disposition was revoked. Staff noted that this was less than one percent of the population of felony offenders reported.

10. Adjournment

Before adjournment, Chair Dietzen recognized Commander Ford with a plaque for his service to the Commission and to the State of Minnesota as the longest-serving peace officer member since its 1978 inception, to the goals and ideals of the nation's first sentencing guidelines commission. Chair Dietzen said that Commander Ford had served the State of Minnesota and Commission well for over six years. Members, staff, and the public joined in recognizing Commander Ford for his achievements.

Motion by Vice-Chair Schellhas and second by Ms. Middlebrook to adjourn.

Motion carried unanimously.

The meeting was adjourned at 4:01 p.m.