A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 20, 2018, in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155.

Present were Commission Chair Justice (Ret.) Christopher Dietzen, Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Valerie Estrada, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, Commissioner of Corrections Tom Roy, Yamy Vang and Senior Judge Mark Wernick. Participating telephonically by conference call was Judge Caroline Lennon, the notice required by Minn. Stat. § 13D.015, subd. 5, having been posted on the MSGC website on December 10, 2018.

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 Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice; Ben Johnson, Minn. House of Representatves Research; Robert Small, Minn. County Attorneys Association; and Brandt Williams, Minnesota Public Radio. No members of the public participated telephonically.

1. **Call to Order**

   Chair Dietzen called the meeting to order at 1:30 p.m.

   Chair Dietzen asked Executive Director Reitz to call the roll because there was a member participating by telephone.

   Present were Commission Chair Justice (Ret.) Christopher Dietzen (in person), Vice-Chair Judge Heidi Schellhas (in person), and Commission members Angela Champagne-From (in person), Valerie Estrada (in person), Judge Caroline Lennon (by phone), Cathryn Middlebrook (in person), Sgt. Salim Omari (in person), Peter Orput (in person), Commissioner of Corrections Tom Roy (in person), Yamy Vang (in person), and Judge Mark Wernick (in person). No members were absent.

2. **Approval of Agenda**

   This was on the agenda as an action item.
Motion by Vice-Chair Schellhas and second by Commissioner Vang to approve the meeting agenda.

Motion carried unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Chair Dietzen asked if there were any additions or corrections to the minutes.

Motion by Commissioner Omari and second by Commissioner Wernick to approve the draft meeting minutes from November 8, 2018.

Motion carried unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

4. Proposal to Amend the Sentencing Guidelines

This was on the agenda as an action item.

A. Review of Public Hearing Record

Chair Dietzen called on Executive Director Reitz who detailed how the Commission complied with the public hearing requirements.

Director Reitz stated that, on November 13, 2018, the notice of public hearing was published in the State Register and the contents of the proposal were simultaneously posted on the Commission’s website, and an e-mail was sent to interested persons who have signed up on the Commission’s website to receive informational e-mails. Director Reitz said that, because no one was on the United States mailing list, no one was notified by US Mail. Director Reitz said that this notice was in compliance with Minn. Stat. § 244.09 and Chapter 3000 of the Minnesota Administrative Rules.
Director Reitz stated, pursuant to the notice, the public hearing was held on December 13, 2018, in Room 1100; Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. Four members of the public spoke, and a summary of their testimony was part of the record. Director Reitz said that a link to an audio recording of the hearing was sent by e-mail to the Commission on December 14, 2018. Director Reitz said that, after the public hearing, the record remained open for five calendar days to accept written comments; the Commission received two written comments: one from the Minnesota State Bar Association Criminal Law Section, and one from Rev. Eliot Howard. Director Reitz said that those were part of the meeting materials, and that no written comments were received after the record was closed.

B. Adopt or Reject Proposal to Amend the Sentencing Guidelines

Chair Dietzen made the following statement.

1) The Commission’s primary consideration in establishing and modifying the Guidelines is public safety, which we interpret to mean protecting the public from crime. Our examination requires us to balance the important purposes of sentencing which are retribution or punishment, incapacitation, deterrence, restitution and rehabilitation. In doing so we must also factor in the important public policy goals of uniformity, proportionality, rationality and predictability in sentencing.

2) The first change gives the judge discretion to waive assignment of a custody status point for qualifying less violent offenses provided the judge finds that doing so is consistent with certain enumerated criteria. The rationale for change is that the current Guideline approach for custody status points results in double-counting because the offender is sentenced for the crime and receives a custody status point. The argument against is that an offender who reoffends while on probation is more culpable than a person who is not. The bigger concern is that every felony offence regardless of severity receives a point. A majority of the Commission believes that some reform is necessary, and that giving a judge discretion to waive the assignment of the custody status point for the less violent offenses will improve rationality and proportionality in sentencing and not sacrifice public safety. Specifically, permitting waiver for the less severe/violent offenses avoids the current formulaic approach that disregards the severity of the offense.

3) The second category of changes involve changes to how the decay factor for the criminal history score is calculated, as well as the one-half custody status point, custody status calculation after early discharge from probation, custody status for Minn. Stat. § 152.18, Stays of Adjudication, and technical correction to certain misdemeanor units. These changes will promote rationality and proportionality in certain sentences and make technical changes due to recent legislation and will not sacrifice public safety. For example, the 15-year decay factor currently begins to run at the end of the sentence. For a typical offender
who receives a 48-month executed sentence, that person serves 36 months of incarceration and then 12 months of supervised release. At the end of that time—totaling 48 months—the 15-year “clock” begins to run. But, for a typical offender who receives a 48-month stayed sentence (on the condition that the person be on probation for 12 years) that person’s 15-year decay-factor “clock” does not begin to run until after the expiration of the twelve years of probation. It is neither rational nor fair to penalize the probationer in this situation. The proposed change would have the 15-year for the typical probationer to begin on the date the judge imposed sentence, and not the day the term of probation expires.

4) The third category is the creation of a sentencing enhancement for repeat violent offenders for certain qualifying crimes. This change will benefit public safety because it adds a sentencing enhancement for offenders who engage in repeat, severe violent crimes. A majority of the Commission believes that public safety, particularly the goals of retribution, incapacitation and deterrence, will be improved as a result of this change. The change is consistent with the public policy goals of uniformity, rationality, proportionality and predictability and wisely stewards the limited correctional resources of the state.

Chair Dietzen entertained a motion to adopt the proposal to amend the Minnesota Sentencing Guidelines and Commentary.

**Main Motion** by Commissioner Champagne-From and second by Commissioner Orput to adopt the proposal to amend Minnesota Sentencing Guidelines and Commentary §§ 1.B, 2.B, 2.G, and 8, and the appendices, to become effective August 1, 2019, and to apply to crimes committed on or after that date, unless the Legislature by law provides otherwise.

The Commission engaged in discussion wherein a subsidiary motion was made and voted on.

Chair Dietzen directed members to a memorandum from himself to the Commission dated December 14, 2018, where he suggested an amendment to the proposed modifications. Chair Dietzen explained that these suggested edits were intended only to enhance readability, clarity, and ease of application, and that they were not intended to change, in any substantial way, the proposal as unanimously agreed upon on November 8, 2018.

Chair Dietzen entertained a subsidiary motion.

**Motion** by Commissioner Champagne-From and second by Commissioner Orput to amend the proposed modifications in order to make the changes suggested in Chair Dietzen’s memorandum dated December 14, 2018.

The Commission discussed the subsidiary motion.
Motion carried unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

The Commission then moved on to the main motion, as amended.

Main Motion carried unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

Chair Dietzen said that the modifications, as amended, will be submitted to the Legislature in the Commission’s Report to the Legislature.

5. Effective Date of Sentencing Guidelines Modifications After State v. Kirby

This was on the agenda as a discussion and possible action item.

Chair Dietzen introduced the item and said that, since 1987, Guidelines rule had been that modifications only apply to offenders whose date of offense is on or after the specified modification effective date; thus, a Guidelines modification only applied to offenses committed on or after the effective date of the change.

Chair Dietzen then called on Director Reitz who reviewed the issue further as outlined in the Staff Issue Paper: Effective Date of Proposed Sentencing Guidelines Modifications After State v. Kirby. Mr. Reitz explained actions that it recommended the Commission makes in order to avoid the application of the Kirby amelioration doctrine to the proposed Guidelines modifications.

The Commission discussed the item and a motion was made.

Motion by Vice-Chair Schellhas and second by Commissioner Vang to amend Minnesota Sentencing Guidelines and Commentary § 3.G, as shown in the staff memorandum.

A discussion ensured.

Motion carried unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari,
Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

Chair Dietzen said that the changes would be reported in the Commission’s Report to the Legislature, and would be subject to public hearing and final adoption before August 1, 2019.

Chair Dietzen entertained a motion to adopt the resolution that was detailed in the staff paper.

**Motion** by Commissioner Vang and second by Commissioner Omari to adopt the draft resolution to recommend legislative changes as detailed in the staff paper.

A lengthy discussion ensured and a 10-minute recess was taken.

Chair Dietzen called the meeting back to order at 2:45 p.m., at which time the draft resolution was amended to add the clause “, unless otherwise specified by the commission,” after the word “apply,” to the language recommended to be added to Minn. Stat. § 244.09, subd. 11.

The maker of the motion and the second accepted the friendly amendment.

**Motion carried** unanimously on an 11–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick. Chair Dietzen voted.

Chair Dietzen said that the resolution, as amended, and its recommendation would be included in the Commission’s Report to the Legislature.


This was on the agenda as a discussion and possible action item.

Chair Dietzen called on Director Reitz who directed members to the draft report dated December 18, 2018. Director Reitz reviewed the report section by section. The Commission asked questions and thanked the staff for its work. Chair Dietzen said that final action will be taken at the meeting on January 10, 2019.

7. **Executive Director’s Report**

This was on the agenda as an information item.

Chair Dietzen called on Director Reitz who reported on five items.
• Robina Institute just published the final version of their report entitled, “Minnesota Criminal History Score Recidivism Project,” on which the Commission has received multiple reports. Director Reitz sent members the link to that report yesterday and a link will be made available on the Commission’s website with the December 20 meeting materials. (Staff note: the link in question was:

• A quorum is required for the January 10 meeting, as the Commission will be finalizing its report to the Legislature. Director Reitz said that, to facilitate a quorum, members can participate by telephone. The meeting will be held in the Minn. Judicial Center, Room 230.

• The Secretary of State has received 12 applications for the seven open Commission seats. For the public defender, county attorney, peace officer, and probation officer seats, each incumbent has reapplied. The remaining eight applicants applied for the three public member seats. Two of these applicants are incumbents; Judge Wernick has not reapplied for membership.

• Even if their term expires January 7, 2019, members’ service continues until their successors are appointed, as long as they continue to occupy the position that made them eligible for appointment.

• Commissioner Roy would be retiring as Commissioner of Corrections on January 2, 2019, and, today, Governor-Elect Walz named Police Chief Paul Schnell to succeed Commissioner Roy.

8. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak. No one came forward.

9. Recognition of Service – Commissioner of Corrections Tom Roy

Chair Dietzen recognized Commissioner Roy with a plaque for his service to the Commission from 2011 through 2019.

Chair Dietzen made the following statement in recognition of Commissioner Roy’s service:

Since the Sentencing Guidelines Commission was established in 1978, eight Commissioners of Corrections have served on it. None has served longer than Commissioner Tom Roy.
Commissioner Roy has spent his entire career on the front lines of corrections. In his first job as a probation officer for Arrowhead Regional Corrections in Northeast Minnesota, Tom learned to work with individual offenders who were trying to turn their lives around.

In 1984, Tom was promoted to the position of chief probation officer for Arrowhead Regional Corrections, where he was tasked with coordinating all adult and juvenile probation and parole programs in a five county area in Northeast Minnesota. In 2002, he earned a promotion to the position of the agency’s executive director, where he managed a staff of 221 employees.

In 2011, Governor Mark Dayton appointed Tom Roy to become Minnesota’s Commissioner of Corrections. Commissioner Roy is charged with the safety, security, operations, and programming of ten prisons. He supervises a staff of over 4,300, an inmate population of over 10,000, a community-supervised population of 20,000, and a biennial budget of over a billion dollars.

Throughout his distinguished career, Tom has focused on improving public safety by reducing recidivism through innovated programming and practices. The work of the Sentencing Guidelines Commission over the last eight years has been immeasurably enhanced through Commissioner Roy’s wise contributions.

On behalf of the Commission, Tom, I’d like to present you with this plaque, which reads, “Tom Roy, Minnesota Sentencing Guidelines Commission, Commissioner of Corrections Member, 2011 through 2019. In grateful recognition of your eight years of service to the goals and ideals of the nation’s first sentencing guidelines commission.”

Chair Dietzen thanked Commissioner Roy. Members, staff, and the public joined in applause in recognition of Commissioner Roy’s many achievements. In turn, Commissioner Roy thanked Chair Dietzen, the Commission, and staff.

10. Adjournment

Chair Dietzen entertained a motion to adjourn.

Motion by Vice-Chair Schellhas and second by Estrada to adjourn.

Motion carried unanimously on a 10–0 roll-call vote.

Voting “Yes” were Vice-Chair Schellhas, Commissioner Champagne-From, Commissioner Estrada, Commissioner Lennon, Commissioner Middlebrook, Commissioner Omari, Commissioner Orput, Commissioner Roy, Commissioner Vang, and Commissioner Wernick.

The meeting adjourned at 3:10 p.m.