Approved Meeting Minutes

November 8, 2018

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on November 8, 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, Judge Caroline Lennon, Cathryn Middlebrook, Sergeant Salim Omari, 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, Jill Payne and Anne Wall.

Members of the public present included Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice; Richard Frase, University of Minnesota Law School; Ben Johnson, Minn. House of Representatives Research; Kathleen Lonergan, Minn. Department of Corrections; Robert Small, Minn. County Attorneys Association; Lars Negstad, ISAIAH, Faith in Democracy; Jasmine Carey, Council for Minnesotans of African Heritage; and William Ward, State Public Defender.

1. Call to Order

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

2. Approval of Agenda

This was on the agenda as an action item.

Motion by Sgt. Omari and second by Judge Lennon to approve the meeting agenda.

Motion carried unanimously.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Chair Dietzen asked if there any additions or corrections to the minutes.
Commissioner Roy said that he wished to clarify, and put on the record, that on page 3 of the meeting minutes from October 11, 2018, was an accurate representation of his motion, and that he did not comment on the effect of the motion, as was presented in Chair Dietzen’s memorandum to the Commission dated November 1, 2018, page 2.

Chair Dietzen apologized to Commissioner Roy and said that his memorandum was inaccurate.

4. **Draft Proposal to Amend the Sentencing Guidelines**

This was on the agenda as an action item.

A. **Adopt or Reject Proposal for Public Hearing on December 13, 2018 &**

B. **Determine Date for Follow-Up Meeting**

Chair Dietzen introduced his memorandum to the Commission dated November 1, 2018, in which he outlined the relevant background and presented the revised proposal to amend the Guidelines.

Chair Dietzen also presented an additional one-page staff memorandum dated November 8, 2018, in which alternative language to Comment 2.B.203, describes that the primary consideration to determining a custody-status point waiver is public safety.

Chair Dietzen entertained a motion.

**Main Motion** by Vice-Chair Schellhas and second by Ms. Champagne-From to hold a public hearing on December 13, 2018, to consider a non-legislative proposal to amend Minnesota Sentencing Guidelines and Commentary §§ 1.B, Definitions; 2.B, Criminal History; and 2.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers; to renumber § 8, Targeted Misdemeanor List, as Appendix 4; and to establish a new § 8 designating a list of severe violent offenses.

**The Commission engaged in a lengthy discussion about the main motion wherein subsidiary motions were made and voted on.**

Chair Dietzen called on Director Reitz who explained a technical correction to Guidelines § 2.B.3.a, that is part of the proposal. Director Reitz said that he wanted to bring it to the Commission’s attention because it was not discussed previously, and that existing Guidelines language might tend to create confusion about how misdemeanor units applied to criminal vehicular homicide and injury, and felony driving while impaired. The Commission had no comments or questions.
The Commission discussed the proposed waiver to the custody status point and a technical amendment to the draft language in Guidelines § 2.B.2.e, which would allow any party, including the defendant, to file a motion to waive assignment of a custody status point.

**Motion** by Judge Wernick and second by Ms. Middlebrook to revise the proposed language of Guidelines § 2.B.2.e to read, “… the court, on its own motion or on the motion of a party …”

**Motion carried** unanimously.

The Commission discussed the offenses in the draft proposal for which the court is not authorized to waive assignment of a custody status point in Guidelines § 2.B.2.e(4).

**Motion** by Judge Wernick and second by Ms. Middlebrook to remove Fleeing Peace Officer (Great Bodily Harm) under Minn. Stat. § 609.487, subd. 4(b), from the list of offenses not authorized to waive assignment of a custody status point.

**Motion failed** on a 5–5 vote in which the Chair voted against the motion.

The Commission discussed the proposed decay factor and draft language in Guidelines § 2.B.1.c. The Commission discussed conditional release, the definitions of “expired” and “discharged,” public safety, and sentence uniformity and disparity.

**Motion** by Vice-Chair Schellhas to remove “or was discharged” from proposed language of Guidelines § 2.B.1.c(1).

The motion was not seconded; **Motion failed**.

The Commission discussed the proposed waiver to the custody status point and draft language in Guidelines § 2.B.2.e(1), in which the court may consider whether the offender has used available probation services, and to what extent the offender has met conditions.

**Motion** by Judge Lennon and second by Commissioner Roy to revise the proposed language of Guidelines § 2.B.2.e(1) to read, “… has otherwise been in substantial compliance with the conditions of probation …”

**Motion carried** unanimously.

Before calling for a vote on the main motion, Chair Dietzen asked Commissioners if they had any questions. Chair Dietzen restated the main motion. Chair Dietzen said that the vote would include the amendments made in the subsidiary motions that passed.
Additionally, Chair Dietzen said that the meeting to formally adopt or reject the proposal would be held December 20, 2018, at 1:30 p.m. in Room 1100 of the Minnesota Senate Building, unless there was an objection.

Main Motion carried unanimously. Chair Dietzen voted.

5. Commission’s 2019 Report to the Legislature

This was on the agenda as an information item.

A. Overview of Report Requirement and Timeline

Chair Dietzen called on Director Reitz who said that the Commission’s 2019 Report to the Legislature is due January 15, 2019, and fulfills the Commission’s statutory reporting requirements. Director Reitz said that the Commission also takes the opportunity to present sentencing data practices and trends.

Approval of Draft Meeting Minutes

Chair Dietzen called for a motion to adopt the draft meeting minutes from October 11, 2018, because it was inadvertently skipped under agenda item number 3, above.

Motion by Mr. Orput and second by Sgt. Omari to approve the meeting minutes from October 11, 2018.

Motion carried unanimously.

B. 2017 Sentencing Data Presentation

Director Reitz called on Senior Research Analysis Specialist Anne Wall to present the 2017 sentencing practices: annual summary statistics for felony offenders.

Ms. Wall reported on the number of felony offenders sentenced in Minnesota in 2017 (18,288), saying it was the highest volume on record. Ms. Wall reported on the distribution of cases, total incarceration rates, average pronounced sentences, and departure rates.

The Commission discussed the data presentation, asked questions, and made suggestions.

6. Executive Director’s Report

This was on the agenda as an information item.

Chair Dietzen called on Director Reitz who reported on four items.
• Director Reitz said that Anne Wall and Jill Payne presented the Probation Revocation Report to the Tribal Court State Court Forum (TCSCF) in October. Director Reitz said that the TCSCF is comprised of tribal court judges from Minnesota’s 11 federally recognized tribes and state court judges from Minnesota’s 10 judicial districts. Director Reitz said that TCSCF was interested in the higher than average revocation rate reported for American Indian offenders at 26.4% vs. the average 16.5%.

• Director Reitz reported that the notice of open positions for the governor appointed positions was posted on the Secretary of State’s (SOS) website, but three positions are not appearing as “open” due to a technical glitch. Director Reitz said that he is working with SOS staff to resolve the technical issue.

• Director Reitz said that the public hearing will be held on Thursday, December 13, 2018, at 1:30 p.m. in Room 1100, of the Minnesota Senate Building (MSB), 95 University Ave. W., Saint Paul, MN 55155, and that the meeting to formally adopt or reject the proposal would be held on Thursday, December 20, 2018, at 1:30 p.m. in Room 1100, of the MSB, as well. Director Reitz said that a quorum on December 20, 2018 was required, and that meeting by telephone would be available.

• Director Reitz extended his congratulations to Peter Orput on his reelection as Washington County Attorney on Tuesday, November 6, 2018, with 99 percent of the vote.

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

8. Adjournment
Chair Dietzen called for a motion to adjourn.

Motion by Ms. Estrada to adjourn.

Motion carried unanimously.

The meeting adjourned at 3:29 p.m.