

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
September 28, 2016

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on September 28, 2016, in Room 116C of the Administration Building, 50 Sherburne Ave., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Commission Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, Yamy Vang, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Kathleen Madland, Jill Payne and Anne Wall. Assistant Attorney General Jim Early was also present.

Members of the public present included Heather Anderson; Connie Handle; Nancy From; Meghan Marty; Cheri Peterson; Randall Rehmann; Diane Rifkin; John and Diane Sleizer; Mariana and Monty Schunk; Peter Thompson; Renee Thompson; Nancy M. Young; Eduard and Natalie Zelkind; Peter Thompson and Julie Matonich, Children of Incarcerated Caregivers (CIC); Lars Negstad, Isaiah MN; Josh Esmay and Nathaniel Gurol, Legal Rights Center; Dan Ganin, Kathleen Lonergan, Lisa Netzer, and Jeff Reed, Minn. Department of Corrections; Robert Small, Executive Director of the Minn. County Attorneys Association; Justin Terrell, Take Action Minnesota; Sam Wertheimer and Dawn Nyhus, Sherburne County Attorney's Office.

1. Call to Order

Chair Dietzen called the meeting to order at 2:00 p.m. Chair Dietzen thanked the members of the public for their attendance.

2. Approval of Agenda

This was on the agenda as an action item.

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

Motion carried unanimously.

3. Approval of Draft Meeting Minutes from August 24, 2016

This was on the agenda as an action item.

Motion by Ms. Vang and second by Ms. Middlebrook to approve the meeting minutes from August 27, 2016.

Motion carried unanimously.

4. Life Sentences for Juveniles in Minnesota

This was on the agenda as a discussion item.

Chair Dietzen explained that the purpose of the discussion was to introduce the topic of juvenile offenders convicted of first-degree murder due because of the problem with Minnesota's sentencing scheme due to recent U.S. Supreme Court decisions, and, if the Commission could reach a consensus, to propose a recommendation to the Legislature about changes to the criminal code.

Members discussed the issue. Chair Dietzen placed the item on the October 2016 agenda when the Commission will receive an overview from the Minn. Department of Corrections on the parole-release process as it applies to life offenders eligible for release. Chair Dietzen placed the item on the November 2016 agenda in order to hear from stakeholders: public defense, prosecution, and corrections. During the discussion, it was noted that the Commission's positions for the probation representative and the county attorney representative were vacant.

5. Repeat Violent Offenders

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

Chair Dietzen called on Executive Director Reitz to explain the item. Executive Director Reitz said that MSGC staff was asked to prepare a literature review, draft legislation for purposes of analysis, and an impact statement based on assumptions in the draft legislation.

Executive Director Reitz explained that the draft legislation for purposes of analysis would add a provision for a "severe violent crime" to the dangerous and repeat felony offender

law and the penalty would be a mandatory minimum 25 years. Senior Research Analysis Specialist Anne Wall explained that the impact would be an estimated 3,444 prison beds.

Director Reitz explained that there were three letters in the meeting materials that had not yet been seen by Commission members because they had been received after preview materials had been sent to the Commission. The letters were in support of a repeat violent offender law. Chair Dietzen gave members a few minutes to read the letters.

Chair Dietzen called on Ms. Champagne-From who made a statement about her experience being victimized by a repeat offender. Ms. Champagne-From's statement included the names of victims who were murdered by repeat offenders. Ms. Champagne-From stated that a repeat violent offender law would improve public safety.

The Commission reviewed the documents and discussed how frequently the existing violent offender sentencing provisions are used.

Motion by Vice-Chair Schellhas and second by Ms. Champagne-From to study further the proposed legislation amending the Dangerous Offender statute, and to consider, alternatively, amendments to the Minnesota Sentencing Guidelines, in order to address the appropriate sentencing of offenders with prior violent convictions and to balance prison-bed impact appropriately.

A discussion ensued, during which Vice-Chair Schellhas accepted a friendly **amendment** from Judge Wernick to divide the question; to table the portion of the motion dealing with study of amending the criminal code; and to proceed with a vote on the portion of the motion dealing with study of amendments to the Minnesota Sentencing Guidelines.

As so amended, the **motion carried** unanimously.

6. Robina Institute Research Project Update

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

Chair Dietzen called on Executive Director Reitz who explained that it was the understanding of MSGC that Robina was experiencing data matching and data interpretation problems, which have thwarted Robina's efforts to continue its study of criminal history scores and recidivism. MSGC staff would like to assist Robina if it did not violate the 2012 partnership-delay resolution presently prohibiting MSGC staff from providing assistance.

Motion by Judge Wernick and second by Commissioner Roy to adopt the staff recommendation that would allow MSGC staff to assist Robina with its recidivism study provided that there is a memorandum of understanding (MOU).

Motion carried unanimously.

7. Follow-up on Juvenile History Point

This was on the agenda as an informational item.

Chair Dietzen called on Executive Director Reitz who explained that at its August meeting, the Commission requested the raw data for two slides presented during the Juvenile Point Criminal History Overview: 1) *“Reasons for Presumptive Commit Vary”* (Slide 11); and 2) *“Presumptive Commitments: Guidelines Years 1995-2014”* (Slide 12). Executive Director Reitz directed the Commission’s attention to this month’s meeting materials, which contained the raw data.

8. Adopt New Meeting Calendar

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz who explained that a new meeting calendar for November and December of 2016 and January through December of 2017 were being proposed in order to accommodate various deadlines throughout the year. The Commission discussed options. One of the options discussed would schedule monthly meetings for the second Thursday of the month, with special scheduling considerations for June, July, and August, beginning in 2017.

Motion by Sgt. Ford and second by Judge Wernick to meet from 2:00 to 4:00 p.m. on the following dates: Thursday, November 17, 2016; Thursday, December 15, 2016; Thursday, January 12, 2017; Thursday, February 9, 2017; Thursday, March 9, 2017; Thursday, April 13, 2017; Thursday, May 11, 2017; Thursday, June 8, 2017; Thursday, July 20, 2017 (public hearing) & Thursday, July 27, 2017 (follow-up meeting); Thursday, September 14, 2017; Thursday, October 12, 2017; Thursday, November 9, 2017; and Thursday, December 14, 2017.

Motion carried unanimously.

9. The Severity Level of Child Neglect

This was on the agenda as a discussion item.

Chair Dietzen called on guest presenter, Assistant Sherburne County Attorney Dawn R. Nyhus. Ms. Nyhus reported that the Sherburne County Attorney's office requested that the Commission review the Severity Level 1 ranking for child neglect and endangerment under Minn. Stat. § 609.378, because there was currently "no teeth in the charge and penalty." Ms. Nyhus explained that gross misdemeanor child neglect and child endangerment are enhanced to a felony with a five-year prison sentence and \$10,000 fine, if the neglect or endangerment "results in substantial harm to the child's physical, mental, or emotional health." The Commission reviewed a list of ranked felony offenses that were elevated due to "substantial bodily harm." Ms. Nyhus recommended that child neglect and endangerment under Minn. Stat. § 609.378, be ranked at Severity Level 4 because it best delineates with "substantial bodily harm" crimes that were ranked at Severity Level 4.

Chair Dietzen asked that the item be put on the Commission's October meeting agenda.

10. Executive Director's Report

Chair Dietzen called on Executive Director Reitz who stated that, as was discussed under agenda item 4, the Commission was still missing the probation officer representative and the county attorney representative.

11. Public Input

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

Meghan Marty spoke in favor of mandatory minimums for repeat violent offenders. She told her story of being the victim of a repeat violent offender. Ms. Marty stated that her assailant would go on to attack Commission member Angela Champagne-From two weeks after she was a crime victim.

Judge Robert Small, Executive Director of the Minn. County Attorneys Association, informed the Commission that the Minnesota Bar Association was impaneling a group of experts to address life sentences for juveniles in Minnesota.

Justin Terrell, Take Action Minnesota, spoke in opposition to three strikes laws in Minnesota. Mr. Terrell gave his personal narrative of being an ex-offender and a crime victim, and he noted that black people make up five percent of Minnesota's population, but 35 percent of its prison population.

Peter Thompson, Children of Incarcerated Caregivers, requested the Commission consider Guidelines commentary that would address a defendant's status as a parent as a reason for dispositional departure. Chair Dietzen asked Mr. Thompson to submit his proposal to Executive Director Reitz for consideration.

Mariana Schunk stated that she wished to address and thank the people who came to the Commission meeting to support her. She stated that she believed in rehabilitation, and also wished that the Legislature would address public safety issues with a minimum 25-year repeat offender law.

John Sleizer, friend of the Schunk family, stated that he believed that people should be given second chances but also believed that "enough is enough" for people who demonstrate repeat violent behavior and that, for those people, there must be consequences.

Eduard Zelkind, friend of the Schunk family, stated that he was sad to see how political the meeting was and that the Commission moved too slowly. Mr. Zelkind said that the issue of repeat violent offenders should be "racially blind," and said to Commission members, "shame on you."

Chair Dietzen thanked the public for their testimony.

12. Adjournment

Chair Dietzen called for a motion to adjourn.

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

Motion carried unanimously.

The meeting was adjourned at 4:14 p.m.