

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
January 12, 2017

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on January 12, 2017, in Room 116C of the Administration Building, 50 Sherburne Ave., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, and Commission members Angela Champagne-From, Valerie Estrada, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, and Commissioner of Corrections Tom Roy.

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

Members of the public present included Lars Negstad, ISALAH MN; Josh Esmay, Legal Rights Center; Robert Small, Minn. County Attorneys Association; John Kingrey, Minn. State Bar Assoc.; Lisa Netzer, Minn. Department of Corrections; Perry Moriearty, University of Minnesota Law School; and Leslie Rosenberg, Assistant State Appellate Public Defender.

1. Call to Order

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

Motion carried unanimously.

3. Approval of Meeting Minutes

This was on the agenda as an action item.

Chair Dietzen recognized Executive Director Reitz, who corrected a typographical error on Page 1, Line 2: The year of the previous meeting was “2016,” rather than “2015,” as incorrectly stated.

Motion by Ms. Estrada and second by Ms. Middlebrook to approve the meeting minutes from December 30, 2016.

Motion carried unanimously.

4. Review of Final 2017 Report to the Legislature

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz to present a draft of the 2017 Report to the Legislature dated January 12, 2017. Executive Director Reitz explained that the report is due by January 15, 2017, to the Senate and House committees with jurisdiction over criminal justice policy; however, because the 15th falls on a Sunday, MSGC staff will be submitting the report Friday, January 13, 2017.

To the draft report, the Chair offered a final explanatory bullet point in the portion of the Executive Summary dealing with the Commission's actions of December 30; and staff offered a clarification that Appendix 4.3 reflected the Vice-Chair's "comments," rather than her "memorandum." The Commission reviewed the draft report and discussed changes since the last revision.

Motion by Sgt. Ford and second by Mr. Orput to approve the 2017 Report to the Legislature.

Motion carried unanimously.

5. Life Sentences for Juveniles in Minnesota

This was on the agenda as a discussion item.

Chair Dietzen called on Ms. Middlebrook to introduce the two presenters: Associate Prof. Perry Moriearty from the University of Minnesota Law School; and Leslie Rosenberg, Assistant State Appellate Public Defender.

Ms. Moriearty and Ms. Rosenberg gave a presentation on Juvenile Life without Parole in Minnesota including brain development in adolescents, fair and rational sentences for juveniles, and a review of what other states are doing post-*Miller v. Alabama*. The Commission asked questions of the presenters and discussed the item.

6. Guidelines Implications of *State v. Haywood*, 886 N.W.2d 845 (Minn. 2016)

This was on the agenda as a discussion item.

Chair Dietzen called on Executive Director Reitz to give a presentation on *State v. Haywood*. Director Reitz explained that the case held that a BB gun is not a “firearm” under Minn. Stat. § 609.165 (felon in possession of a firearm). Director Reitz explained that the *Haywood* decision was then applied to Minn. Stat. § 624.713 in *State v. Yang*, 887 N.W.2d 40 (Minn. App. 2016). Director Reitz alerted the Commission to the possibility that some past sentences may be vacated as a result of these decisions.

The Commission discussed the implications of the vacation of past sentences on criminal history.

Motion by Commissioner Roy and second by Ms. Middlebrook to table the discussion and have Commission members report back as cases develop.

Motion carried unanimously.

7. Review of Revised Racial Impact Statement Policy

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

Chair Dietzen called on Executive Director Reitz who presented the Commission with a letter addressed to the Chair, dated December 27, 2016, containing an updated racial impact statement policy. Director Reitz explained that the updates, which were marked-up in color, were intended to show that the criteria for when a racial impact screening would be completed would change to whenever there was an increase or decrease in a targeted group’s representation in the felony or prison populations. Director Reitz explained that the adjustment would also cause a need to explain what to do when population and disparity changed in opposite directions.

The Commission discussed the item and asked questions.

Motion by Commissioner Roy and second by Ms. Middlebrook to put the policy in a format other than a letter and formalize it.

A discussion ensued in which Chair Dietzen asked Executive Director Reitz to see the statute based on the policy and a description of how it is practically applied.

Motion amended by Commissioner Roy to adopt the policy in letter form and enact it immediately. There were no objections to the amendment.

The discussion continued, wherein it was suggested that Executive Director Reitz consult with the Governor's Diversity and Inclusion Council to ensure that the Commission's policy is a good equity-strategy fit.

Motion withdrawn.

Motion by Sgt. Ford and second by Ms. Estrada to revise the Commission's racial impact statement policy at its next meeting; and, in the interim, use the existing method to respond.

Motion carried unanimously.

8. Memorandum of Understanding (MOU) with Robina Institute

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

Chair Dietzen called on Executive Director Reitz who explained that the revised MOU dated January 10, 2017, was before the Commission and was ready for Chair Dietzen's signature. The revised MOU deleted one condition related to data privacy for which there would need to be a separate MOU between the Commission, the Robina Institute, and the Bureau of Criminal Apprehension.

Motion by Judge Lennon and second by Ms. Middlebrook to approve the Memorandum of Understanding with Robina Institute.

Motion carried unanimously.

9. Director's Report

Chair Dietzen called on Executive Director Reitz who reported on four items:

Director Reitz said that he testified before the Senate Judiciary and Public Safety Finance and Policy Committee yesterday, Wednesday, January 11, 2017. Because the committee ran out of time, its Chair invited him back to discuss data trends at a later date. Executive Director Reitz reiterated that, tomorrow, January 13, 2017, MSGC staff would be submitting the Commission's Annual Report to the Legislature to the Senate

Judiciary and Public Safety Finance and Policy Committee and the House Public Safety and Security Policy and Finance. This was in order to fulfill the Commission's statutory obligation.

Director Reitz directed the Commission's attention to House File 33, which was in the meeting materials. Executive Director Reitz explained that the bill would require all Sentencing Guidelines modifications to be approved by the Legislature rather than just those modifications that amend the Sentencing Guidelines Grid, as was the current requirement. Commission members discussed the item and asked staff whether the Commission had ever voiced an opinion about a bill to the Legislature in the past. MSGC staff recalled a time, in the last five years, when a parole board bill was introduced and, then Chair Edblad, testified in opposition to the bill because it conflicted with the goals of the sentencing guidelines. Chair Dietzen then asked Minn. County Attorneys Association Executive Director Judge Robert Small, who was present, whether the County Attorneys Association had taken a position on House File 33. Judge Small said that the Association had no formal position.

Director Reitz reported that he would be on military leave February 7-9, 2017, due to his participation in the Joint Military Judges Annual Training, and would therefore be absent during the February 9, 2017, Commission meeting.

Director Reitz reminded Commission members that the annual Statement of Economic Interest recertification was due to the Minnesota Campaign Finance and Public Disclosure Board by January 30, 2017.

Chair Dietzen reported that he, too, would be absent during the Commission meeting scheduled for February 9, 2017, and ascertained from staff and members that no pressing items of business appeared to be ripe for the February agenda. The Chair called for a motion to cancel the February meeting.

Motion by Commissioner Roy and second by Mr. Orput to cancel the February 9, 2017, meeting of the Minnesota Sentencing Guidelines Commission.

Motion carried unanimously.

10. Public Input

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

11. Adjournment

The meeting was adjourned without objection at 4:08 p.m.