

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
October 12, 2017

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on October 12, 2017, in the Lady Slipper Conference Room of the Centennial Office Building, 658 Cedar Street, Ground Floor, Saint 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, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, and Senior Judge Mark Wernick.

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

Members of the public present included Richard Frase, University of Minnesota Law School; Kelly Mitchell, Robina Institute; Lars Negstad, ISAIAH MN; 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.

Chair Dietzen requested that agenda item 4.A be changed to a “discussion item” because new information will be presented and that a new agenda item for Prison Population Projections would be presented by Commissioner of Corrections Tom Roy and inserted as new Agenda Item 8.

Chair Dietzen called for a motion on the approval of the draft agenda, as amended.

Motion by Ms. Middlebrook and second by Judge Wernick to approve the meeting agenda, as amended.

Motion carried unanimously.

3. Approval of Meeting Minutes

This was on the agenda as an action item.

Chair Dietzen asked Commission members to review the draft meeting minutes in the meeting folders, as amended. Chair Dietzen explained that the draft meeting minutes were amended on Page 3, beginning on Line 6, with changes to accurately reflect that the D.C. Commission invited him to attend a one-day retreat on the topic of criminal history in November, that MSGC has sufficient funds to pay for the “no-frills” trip, and that no objections were raised by the Commission.

Motion by Judge Wernick and second by Vice-Chair Schellhas to approve the draft meeting minutes from September 14, 2017, as amended.

Motion carried unanimously.

4. Modifications to the Sentencing Guidelines

A. Offenses Involving a Dangerous Weapon-Application of Mandatory Sentences (Comment 2.E.03)

This was on the agenda as a discussion 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 said that Guidelines commentary 2.E.03 referenced applicable offenses listed in Minn. Stat. § 609.11, subd. 9 that, by definition, involve a dangerous weapon, and that these offenses are always presumptive commitments because, by virtue of the conviction statute, a dangerous weapon was involved. Executive Director Reitz said that staff recommended adding aggravated controlled substance crime in the first degree with a firearm under Minn. Stat. § 152.021, subd. 2b(1), which, by definition, involves the use or possession of a firearm, and therefore always triggers Minn. Stat. § 609.11, subd. 5; and staff recommended removing aggravated stalking while possessing a dangerous weapon because, while mere possession of a dangerous weapon other than a firearm is sufficient to satisfy the aggravated stalking element of possessing a dangerous weapon under Minn. Stat. § 609.749, subd. 3(a)(3), it is insufficient to trigger Minn. Stat. § 609.11, subd. 4.

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, sale or possession of cocaine or methamphetamine, 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. Commission members discussed the item and asked questions of staff. Chair Dietzen asked that the item be put on the November 9, 2017, meeting agenda as a possible action item.

B. Felony Escape from Electronic Home Monitoring

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, where he described escape from EHM under Minn. Stat. § 609.485, subd. 4(f); that it was established in law in 2002; that the statutory maximum sentence is five years; and that the offense is unintentionally omitted from the Offense Severity Reference Table (Guidelines § 5.A) and is therefore considered unranked. Executive Director Reitz said that MSGC staff recommends listing the offense in the Guidelines and officially designating it as “unranked.” Executive Director Reitz said that the Commission may wish to consider whether or not it wanted to add escape from EHM to the list of offenses eligible for permissive consecutive sentences in Guidelines § 6; however, that the list includes only escapes that involved violence.

Motion by Commissioner Roy and second by Ms. Middlebrook to move that the Commission give public notice of its intent to officially designate Escape from Electronic Home Monitoring under Minn. Stat. § 609.485, subd. 4(f), an “unranked” offense in Guidelines § 5, and report the proposal in the Commission’s *2018 Report to the Legislature*, as follows.

Motion carried unanimously.

5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Escape from Electronic Home Monitoring</u>	<u>609.485, subd. 4(f)</u>

* * *

5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.485, subd. 4(f)</u>	<u>Escape from Electronic Home Monitoring</u>	<u>Unranked</u>

5. Statement of Purpose and Principles

This was on the agenda as a discussion item.

Chair Dietzen called on Executive Director Reitz to introduce the issue. Executive Director Reitz said that the Sentencing Guidelines sets out a statement of purpose and principles in Guidelines § 1.A, that the statement was contained in the Commission’s first Report to the Legislature in 1980, and has remained largely unchanged except for stylistic changes that occurred during the 2012 Guidelines Revision Project.

Executive Director Reitz said that, in 1989, the Commission’s enabling statute was amended to include a requirement that the Commission’s primary consideration in establishing and modifying the Guidelines be public safety—with additional relevant changes made in 1996 and 1997—and that the question for discussion was whether or not the Commission wished to change its Statement of Purpose and Principles to incorporate changes made to Minn. Stat. § 244.09, subd. 5?

Chair Dietzen presented draft modifications to the Statement of Purpose and Principles and the Commission discussed the issue.

Commissioner Roy expressed willingness to offer a **motion** on the topic, but, after a discussion on whether such a motion would be in order at this meeting, the motion was **withdrawn**.

Executive Director Reitz asked that any member who wished to submit suggested modifications to the draft language could forward revisions to him by October 26, 2017, and he would present them to Chair Dietzen.

6. Minnesota’s Criminal History Score: A Philosophical and Historical Background
Prof. Richard Frase, Co-Director, Robina Institute of Criminal Law and Criminal Justice

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

Chair Dietzen introduced Professor Richard Frase who is the Benjamin N. Berger Professor of Criminal Law at the University of Minnesota Law School, and Co-Director of the Robina Institute of Criminal Law and Criminal Justice. Chair Dietzen said that Prof. Frase is also the founder and Co-Director of the Robina Institute’s Sentencing Guidelines Resource Center and the Institute’s Criminal History Enhancements project, and is currently teaching Criminal Law, Criminal Procedure, the Federal Defense Clinic, and the Sentencing Guidelines Seminar. Chair Dietzen said that Prof. Frase has published several books on the topic of sentencing guidelines including the Minnesota Sentencing Guidelines.

Prof. Frase presented an overview of the Minnesota Sentencing Guidelines’ criminal history score, explaining that the original 1980 Commission’s policy was a “modified just deserts” philosophy in which “people are given what they deserve, but not more than they deserve.” Prof. Frase said that sentences were designed to be proportional to the offense and was the primary consideration and criminal history was secondary and “capped.” Prof. Frase said that Minnesota’s Guidelines, including the role of criminal history, have always had multiple sentencing purposes with offense proportionality and offender risk each having a substantial role in determining the form and severity of punishment.

The Commission discussed the issue and asked questions of Prof. Frase. Chair Dietzen thanked Prof. Frase and said that Prof. Frase would also be attending the D.C. Sentencing Commission’s retreat studying possible criminal history reform.

7. Criminal History Score Overview: Comparing Sentencing Guidelines Jurisdictions; Other State’s Sentencing Grids with Categorical CHS Categories

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

Chair Dietzen called on Senior Research Analysis Specialist Anne Wall.

Ms. Wall presented a comparison of other state’s sentencing grids with categorical criminal history scores. Ms. Wall explained that the comparison was based on the Robina Institute’s Criminal History Enhancements Sourcebook (Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell, Robina Institute of Criminal Law and Criminal Justice, *Criminal History Enhancements Sourcebook* (2015)).

Ms. Wall explained a metric developed by the Robina Institute to measure the magnitude of criminal history enhancements, noting that 26 percent of the cells on Minnesota's Standard Grid recommended prison due to offenders' criminal history scores (29% on the Sex Offender Grid and 33% on the Drug Offender Grid). Ms. Wall also noted Minnesota ranked second highest on this measure behind Utah's grid.

Ms. Wall explained a second metric developed by the Robina Institute to measure the sentence-length multiplier which divides the recommended duration at the highest criminal history score by the recommended duration at the lowest criminal history score. Among 12 jurisdictions with guidelines that were analyzed, Minnesota ranks in the middle with a multiplier of 4.7, where the lowest multiplier was 1.7 (District of Columbia); and the highest multiplier was 14.4 (Kansas).

Ms. Wall compared Oregon, Kansas, Massachusetts, and Pennsylvania to Minnesota on guidelines' objectives and criminal history scoring.

The Commission discussed the issue, asked about decay periods from other states, and asked whether staff could do an "apples to apples" comparison between other jurisdictions and Minnesota for the most serious offense categories.

8. Prison Population Projections

Commissioner Tom Roy, Department of Corrections
(Discussion Item)

Commissioner Roy presented three items: 1) *Fiscal Year 2018 Adult Prison Population Projections*; 2) *Adult Prison Population Summary as of 07/01/2017*; and 3) *FY2017 Notable Statistics*. The Commission asked questions of Commissioner Roy and discussed the topic.

9. 2016 Sentencing Data Presentation as part of the Draft 2018 Report to the Legislature

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

Chair Dietzen asked Executive Director Reitz whether or not there was sufficient time to devote to this topic. Executive Director Reitz recommended tabling the item to the November meeting. Chair Dietzen called for a motion.

Motion by Vice-Chair Schellhas and second by Judge Lennon to table the 2016 Sentencing Data Presentation to November 9, 2017.

Motion carried unanimously.

10. Director's Report

Chair Dietzen called on Executive Director Reitz who reported on the following items:

- Commission members and members of the public were invited to a special “open house” Commission meeting to take place immediately following adjournment of the regular meeting in Suite G-58, which is the Commission’s new office.
- Members were reminded that the Robina Institute of Criminal Law and Criminal Justice will be holding its annual conference on Friday, December 8, 2017. Executive Director Reitz told Commission members that the agency has sufficient funds to cover the registration fee of \$50 to those members interested, and that the agenda and sign-up sheet were available in the Commission’s office. Executive Director Reitz also said that an updated version of Robina Institute’s Sentencing Guidelines Resource Center’s *Cross-Jurisdictional Comparisons Made Easy*, was also available.
- The Criminal Law Section Council of the Minnesota State Bar Association (MSBA) is proposing legislation that would put limits on felony probation lengths—generally at five years. Executive Director Reitz said that the comment period ends tomorrow, Friday, October 13, 2017, and that he would provide information to anyone interested about how to submit a comment.
- Sergeant Paul Ford (soon to be Commander Paul Ford) submitted to Governor Dayton his resignation from the Minnesota Sentencing Guidelines Commission, effective at the conclusion of the November 9, 2017, meeting. Executive Director Reitz said that the Governor’s Office has been very responsive in posting the vacant peace officer position.
- The next Commission meeting will be November 9, 2017, and will be dedicated, in part, to reviewing the Draft 2018 Report to the Legislature (RTTL), and that the December 14, 2017, meeting will be dedicated to reviewing a special section of the RTTL pertaining to the impact of the 2016 Drug Sentencing Reform Act. Executive Director Reitz said that the January 11, 2018, meeting will be an opportunity for the Commission to finalize the RTTL before it is due to the Legislature the following day, Friday, January 12, 2018.
- Commission members were directed to a letter in the meeting folders from Mariana Schunk about Repeat Violent Offenders.

11. Public Input

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

12. Adjournment

Before adjournment, Chair Dietzen wished to recognize and congratulate Sgt. Ford on his forthcoming promotion to Commander, and his service as peace officer on the Commission. Members and staff joined in congratulating Sgt. Ford.

Motion by Judge Lennon and second by Ms. Middlebrook to adjourn.

Motion carried unanimously.

The meeting was adjourned at 4:00 p.m.