

Approved Meeting Minutes

July 26, 2018

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on July 26, 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, Yamy Vang, and Senior Judge Mark Wernick.

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

Members of the public present included Richard Frase, University of Minnesota Law School; Ben Johnson, House Research; Jessica Kearns, citizen; William Ward, State Board of Public Defense; Lisa Netzer, Minn. Department of Corrections; Robert Small, Minn. County Attorneys Association.

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.

Chair Dietzen noted that item 6 was on the agenda as “discussion,” and that he is seeking input from Commission members in order to send out the memo to stakeholders. Chair Dietzen asked if there was any objection about listing the item as “discussion.” There was none.

Motion by Vice-Chair Schellhas and second by Ms. Estrada to approve the meeting agenda.

Motion carried unanimously.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Vice-Chair Schellhas and second by Ms. Vang to approve the meeting minutes from June 7, 2018.

Motion carried unanimously.

4. Review of Public Hearing Record

This was on the agenda as an informational item.

Chair Dietzen detailed how the Commission complied with the public hearing requirements.

Chair Dietzen stated that, on Monday, June 18, 2018, the notice of public hearing was published in the State Register and the contents of the proposed modifications were posted on the Commission's website. Because no one is on the United States mailing list, no one was notified by mail. On Monday, July 9, 2018, an e-mail was sent to interested persons who have signed up on the Commission's website to receive informational e-mails.

Chair Dietzen stated that the public hearing was held on July 19, 2018, in Room 1100; Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. No members of the public wished to testify before the Commission at that time. After the public hearing, the record remained open for five calendar days to accept written comments; the Commission received no written comments during this period.

Chair Dietzen said that the Commission did receive an e-mail from Jessica Kearns outside the five-day public comment period, and that she was present at today's meeting, and that she wished to address the Commission. Reasoning that Ms. Kearns' comments may relate to the proposed modifications to the Sentencing Guidelines, Chair Dietzen permitted her to speak during this agenda item. Chair Dietzen asked Ms. Kearns to come forward.

Jessica Kearns, who is a member of the public, testified before the Commission. In part, Ms. Kearns said that the Commission claims that the sentencing guidelines are neutral in economic status but that, in reality, the way the criminal justice system is set up, the majority of people sentenced are poor people of color. Ms. Kearns also said that poor people of color are also the majority of people who make up the prison beds in Minnesota's prisons, and that these people are mostly non-violent and technical violators. Ms. Kearns said that citizens should question whether the Commission's statement of purpose and principles promoting public safety is rhetoric or if the methods are proven and evidence-based. Ms. Kearns thanked the Commission for the opportunity to testify.

Chair Dietzen thanked Ms. Kearns for her testimony and said that, because part of it addressed the Commission's proposed modifications to the Guidelines statement of purpose and principles, he would call for a motion to make it part of the record of the hearing on proposed amendments to the Sentencing Guidelines that the Commission would consider when it adopts or rejects its proposals under agenda item 5.

Motion by Judge Wernick and second by Ms. Middlebrook to make Ms. Kearns's testimony part of the hearing record.

Motion carried unanimously.

(Staff note: Because Ms. Kearns’s testimony was made part of the hearing record, her name, address, and telephone number are on file at the Commission’s office.)

5. Accept or Reject Modifications to the Sentencing Guidelines

This was on the agenda as an action item.

A. New Crime Law Affecting the Guidelines

Chair Dietzen called on Executive Director Reitz to summarize *Proposed Modifications to the Sentencing Guidelines and Commentary, Effective August 1, 2018*. Director Reitz began by summarizing the new Unauthorized Computer Access (Electronic Terminal) crime and the Commission’s proposal to rank it at Severity Level 2. Chair Dietzen called for a motion.

Motion by Vice-Chair Schellhas and second by Ms. Vang to adopt a proposal to assign a Severity Level 2 to the new offense of Unauthorized Computer Access (Electronic Terminal) and to make resulting technical modifications, as follows.

Motion carried unanimously.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
2	<u>Unauthorized Computer Access (Electronic Terminal)</u>	<u>609.891, subd. 2(c)</u>

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Unauthorized Computer Access (Grave Risk or Subsequent)</u>	<u>609.891, subd. 2(a) & (b)</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.891, <u>subd. 2(a) & (b)</u>	Unauthorized Computer Access (<u>Grave Risk or Subsequent</u>)	Unranked
609.891, subd. 2(c)	<u>Unauthorized Computer Access (Electronic Terminal)</u>	<u>2</u>

* * *

Next, Director Reitz explained the consecutive sentencing policy, and said that the Commission proposed to add the offense to the list of Offenses Eligible for Permissive Consecutive Sentences. Chair Dietzen called for a motion.

Motion by Ms. Vang to add the new Unauthorized Computer Access (Electronic Terminal) crime to the list of Offenses Eligible for Permissive Consecutive Sentences.

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

**B. Technical Amendment to Crime Law Affecting the Guidelines &
C. Non-Legislative Modifications**

Chair Dietzen called on Executive Director Reitz to explain the remaining proposed modifications to the Guidelines: 1) Statement of Purpose and Principles; 2) Felony Escape from Electronic Home Monitoring; and 3) Offenses Involving a Dangerous Weapon; Application of Mandatory Sentences. Director Reitz did so. Chair Dietzen called for a motion.

Motion by Judge Lennon and second by Ms. Vang to make modifications to Guidelines Sections 1.A, 5.A, 5.B, and 6, and to Comment 2.E.03, as described in Sections B and C of the materials, as follows.

Motion carried unanimously.

Section 1.A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender’s criminal history. ~~Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant~~

sentencing criteria substantially different from a typical case should receive different sanctions.

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.
- ~~1.2.~~ Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
- ~~2.3.~~ The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.
- ~~3.4.~~ Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.
- ~~4.5.~~ Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
- ~~5.6.~~ Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated.

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Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
D9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)

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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>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	D9

* * *

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

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine

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Section 2.E. Mandatory Sentences

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2.E.03. *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minn. Stat. § 152.021, subd. 2b(1); Controlled Substance Crime in the First or Second Degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022,*

subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66; and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3). The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer.

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6. Possible Modifications to Criminal History Scores

This was on the agenda as a discussion item.

A. Judge Wernick's Memo to the Commission

Chair Dietzen called on Judge Wernick who said that his memo to the Commission dated June 4, 2018 intended to explain why he supported the elimination of the custody status point.

The Commission discussed the memo.

B. Severe Violent Crime Proposal (with Revised Offense List)

Chair Dietzen called on Director Reitz, who said that Senior Research Analysis Specialist Anne Wall would report on this item. Ms. Wall referenced the staff issue paper *Revised Severe Violent Crimes, Refined Proposals on Repeat Violent Offenders*. The bed impact was revised after the Commission's June 7, 2018 meeting after two offenses were removed from the list: Assault in the Second degree under Minn. Stat. § 609.222, subd. 1; and Kidnapping – Safe Release under Minn. Stat. § 609.25, subd. 2(1). Ms. Wall said that the new bed impact reduced the number from an estimated 64 prison beds to 52 prison beds.

The Commission discussed the item.

C. Severe Violent Crime Alternatives

Ms. Wall continued to report, and referenced the MSGC staff presentation *Severe Violent Crimes – Overview and Decision Points*. Ms. Wall said that the Commission may wish to consider three questions as they make decisions on severe violent crimes: 1) Does the Commission wish to use a list of offenses vs. a severity-level approach? 2) Does the Commission wish to include all prior severe violent crimes to enhance vs. priors sentenced before the current offense was

committed? 3) Does the Commission wish to enhance the criminal history score vs. using a sentence modifier?

The Commission discussed the item including bed impact contained in the staff issue paper *Severe Violent Crimes, Alternative Proposals on Repeat Violent Offenders*.

D. Review Draft Stakeholder Memo (v.2) – Request for Input

Chair Dietzen called on Executive Director Reitz who presented an unapproved working draft of a memo to criminal justice stakeholders requesting input on possible criminal history score policy modifications.

The Commission discussed the draft memo, at which time it was requested that the following changes be made: 1) add a proposal to abolish the Misdemeanor Point; 2) define “previous offense” and reference Minn. Stat. § 609.3455, subd. 1(f); and 3) make a suggested change to a figure header.

Chair Dietzen directed staff to make the aforementioned changes and send the memo to him for approval by August 3, 2018.

E. Identify Stakeholders

Chair Dietzen called on Executive Director Reitz who listed stakeholders identified by staff:

- Children of Incarcerated Caregivers (CIC)
- Criminal Law Section, Minn. State Bar Association
- Council for Black Male Success
- House Public Safety and Security Policy and Finance Committee
- ISAIAH, Faith in Democracy
- Jewish Community Action
- Legal Rights Center
- Mariana and Monty Schunk
- Minn. Adult & Teen Challenge
- Minn. Association of Black Lawyers (MABL)
- Minn. Association of Community Corrections Act Counties
- Minn. Association of Criminal Defense Attorneys
- Minn. Chiefs of Police Association
- Minn. Coalition Against Sexual Assault (MNCASA)
- Minn. County Attorneys Association (MCAA)
- Minn. Department of Corrections, Field Services
- Minn. Hope Chapter, Parents of Murdered Children, Inc.
- Minn. House Research
- Minn. Judicial Branch
- Minn. Sheriffs Association
- Minn. State Public Defender
- Office of the Attorney General
- Robina Institute of Criminal Law and Criminal Justice
- RS EDEN/Eden House
- Senate Judiciary and Public Safety Finance and Policy Committee
- Take Action Minnesota

- We Are All Criminals

Chair Dietzen asked members if there were other stakeholders to add to the list. Chair Dietzen recognized Sgt. Omari who requested adding the Minn. Police and Peace Officers Association (MPPOA).

Executive Director Reitz said that Commission staff will post the memo on its website and that he intends to present it at the forthcoming Criminal Justice Institute. Chair Dietzen asked people to forward stakeholder suggestions to Director Reitz.

7. Executive Director's Report

This was on the agenda as an information item. Chair Dietzen called on Director Reitz who reported on two items.

A. Case Law update

Director Reitz said that there were three recent published Minn. Court of Appeals cases related to the Guidelines that may be of interest to the Commission.

1. Judicial authority to determine out-of-state priors: *State v. Edwards*, 900 N.W.2d 722 (Minn. Ct. App. 2017), *aff'd mem.*, 909 N.W.2d 594 (Minn. 2018)
2. Sentencing after stays of adjudication: *State v. Greenough*, No. A17-1915, ____ N.W.2d ____, 2018 WL 2770423 (Minn. Ct. App. June 11, 2018)
3. Repeat sex offenders & 2012 Guidelines rewrite: *State v. Oreskovich*, No. A18-1093, ____ N.W.2d ____, 2018 WL 2770426 (Minn. Ct. App. June 11, 2018)

B. NASC update

Director Reitz said that the 2018 conference of the National Association of Sentencing Commissions will be August 13 to 15 in Columbus, Ohio, and that Chair Dietzen, Commissioner Estrada, Judge Wernick, and staff member Anne Wall are MSGC's delegates.

8. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak. Jessica Kearns asked to speak again. Ms. Kearns said that she is a victim of an assault in the third degree in which there was substantial bodily harm and that she had personal experience in the criminal justice system and understands the impact of crime. Ms. Kearns said that, speaking from experience, she is before the Commission saying that the current criminal justice system is

ineffective. Ms. Kearns thanked the Commission and Chair Dietzen thanked Ms. Kearns for her comments.

9. Adjournment

Chair Dietzen called for a motion to adjourn.

Motion by Ms. Middlebrook to adjourn.

Motion carried unanimously.

The meeting adjourned at 3:38 p.m.