

## Approved Meeting Minutes

**October 11, 2018**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on October 11, 2018, in Room G-3 of the Minnesota State Capitol, 75 Rev. Dr. Martin Luther King, Jr. Blvd., St. 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, Yamy Vang, and Senior Judge Mark Wernick. No members were absent.

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 Ben Feist, Civil Liberties Union of Minn; Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice; Richard Frase, University of Minnesota Law School; Ben Johnson, Minn. House of Representatives Research; Lisa Netzer and Kathleen Lonergan, Minn. Department of Corrections; Robert Small, Minn. County Attorneys Association; Lars Negstad, ISAIAH, Faith in Democracy; Jasmine Carey and Shakira Bradshaw, Council for Minnesotans of African Heritage.

### 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 Judge Lennon and second by Ms. Vang 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 Ms. Vang and second by Vice-Chair Schellhas to approve the meeting minutes from September 13, 2018.

**Motion carried** unanimously.

#### **4. Criminal History Score Policy**

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

Chair Dietzen said that the purpose of the agenda item was to determine if the Commission has, or can develop, consensus on a proposal to amend the Guidelines criminal history score and to establish a repeat severe violent offender sentencing enhancement for discussion at the November 8, 2018 Commission meeting. Chair Dietzen further said that it must be determined if there was sufficient consensus to schedule a public hearing for December 13, 2018.

##### **A. Modifications Under Consideration and**

##### **B. Public Hearing Timeline and State Register Publication Decision**

Chair Dietzen introduced a memorandum to the Commission from himself and Vice-Chair Schellhas dated October 4, 2018, which Chair Dietzen said was a product of public safety considerations because that is the primary goal of the sentencing guidelines. Chair Dietzen introduced the portion of the memo that dealt with the custody status point and decay policy. The Commission reviewed the proposal.

Chair Dietzen called on Vice-Chair Schellhas who addressed the portion of the proposal that established a repeat severe violent offender sentencing enhancement. Vice-Chair Schellhas said that the word “violent” should be stricken from the proposal if it was the intent to reference severity levels rather than a specified list of offenses.

Chair Dietzen called on Judge Wernick who addressed a staff memorandum to himself dated October 10, 2018, in which he asked staff to assess the impact of the severe violent offender sentencing enhancement except to change it so that the conviction for the prior offense must precede the *commission* of the current offense. Judge Wernick said that the proposed severe violent offender sentencing enhancement had a disparate impact on black males, particularly in Hennepin County. Additionally, Judge Wernick made suggestions regarding the custody status point waiver.

Chair Dietzen called on Commissioner Roy who introduced his proposal for consideration dated October 11, 2018, which would 1) Reduce the custody status point to one-half for all; 2) End the custody status point at discharge from supervision; and 3) Decay priors beginning at sentencing date. Commissioner Roy said that his proposal addressed the issues of double counting and minimal predictive value for reoffending, were simple changes requiring minimal training or language modification, and ensured people who continued their criminality while under supervision would maintain culpability.

Members discussed public safety, victim impact, demographic impact, prison-bed impact, and ease of application of the proposals.

**Motion** by Mr. Orput and second by Commissioner Roy to move to public hearing a proposal to modify the Guidelines to end eligibility for a custody status point upon discharge from probation.

The Commission discussed the motion.

A friendly amendment was accepted by the maker of the motion and second to add to the proposal a modification to eliminate custody status for Minn. Stat. § 152.18 probation.

The Commission discussed the motion.

**Commissioner Roy called for the vote.**

Chair Dietzen allowed further discussion of the motion.

**Motion withdrawn.**

**Motion** by Commissioner Roy to move to public hearing a proposal to modify the Guidelines to end eligibility for a custody status point upon discharge from probation.

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

Chair Dietzen entertained a motion.

**Motion** by Vice-Chair Schellhas and second by Ms. Vang to hold a public hearing on December 13, 2018, to consider a proposal to amend the Guidelines criminal history score and to establish a repeat severe violent offender sentencing enhancement.

(Staff note: This motion did not yet include the proposal's specific language.)

The Commission discussed the motion.

**Motion carried** unanimously. Chair Dietzen voted.

Chair Dietzen entertained a motion.

**Motion** by Ms. Estrada and second by Sgt. Omari to direct staff to do additional support work for the public hearing on December 13, 2018.

**Motion carried** unanimously. Chair Dietzen voted.

## 5. Executive Director's Report

This was on the agenda as an information item. Chair Dietzen called on Director Reitz who reported that, by the November 9, 2018 Commission meeting, the notice of open positions will be posted on the Secretary of State's website. Director Reitz encouraged those members who are governor appointed, and who wished to reapply for the Commission, to visit the SOS website for application materials.

## 6. Public Input

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

## 7. Meeting Start-Time

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

Chair Dietzen said that several months ago the meeting start-time changed from 2:00 p.m. to 1:30 p.m. with the understanding that it would be re-evaluated. Chair Dietzen asked if there were any conflicts with the meetings starting at 1:30 p.m.

The Commission discussed the item and it was decided that the meetings will continue to start at 1:30 p.m.

## 8. Adjournment

Chair Dietzen called for a motion to adjourn.

**Motion** by Judge Wernick to adjourn.

**Motion carried** unanimously.

The meeting adjourned at 3:27 p.m.