

## Approved Meeting Minutes

**September 13, 2018**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on September 13, 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 Valerie Estrada, Judge Caroline Lennon, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, Commissioner of Corrections Tom Roy, Yamy Vang, and Senior Judge Mark Wernick.

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

Members of the public present included Matt Majovski, Dakota County Community Corrections; Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice; Richard Frase, University of Minnesota Law School; Ben Johnson, Minn. House of Representatives Research; William Ward, State Board of Public Defense; Dan Garin, Tyler Norsted, and Kathleen Lonergan, Minn. Department of Corrections; Robert Small, Minn. County Attorneys Association; Kyra Ladd, Wadena County Attorney; Brenda Miller, Waseca County Attorney; Rebekka Stumme, Assistant St. Louis County Attorney; Rabbi Emma Kippley-Ogman, Jim Rubenstein, John Hall, Ophir Gilad, Jacob Kraus, Jewish Community Action; Brian Fullman, Rev. Eliot Howard, and Lars Negstad, ISAIAH, Faith in Democracy; Patrice Bailey, Jasmine Carey and Shakira Bradshaw, Council for Minnesotans of African Heritage; Brett G. Grant, Voices for Racial Justice; Tyra Thomas, Street Voices of Change; Laura Taken-Holtze, Minn. House of Representatives – DFL Research.

### 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 Mr. Orput and second by Ms. Middlebrook 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. Estrada to approve the meeting minutes from July 26, 2018.

**Motion carried** unanimously.

### 4. Stakeholder Memo dated August 3, 2018

This was on the agenda as a discussion item.

#### A. Review Written Input Received by Sept. 5, 2018

Chair Dietzen explained the request for input memo from various criminal justice stakeholders regarding the pros and cons of adopting one or more possible modifications to the Sentencing Guidelines' criminal history score policy. Chair Dietzen said that this was a topic that the Commission had studied for over a year. Chair Dietzen said that written input was included in the meeting materials and was received from Prof. Richard Frase; Jessica Kearns; Mariana Schunk; the Minnesota State Bar Association's Criminal Law Section; the Robina Institute of Criminal Law and Criminal Justice; Catherine Johnson, Director, Hennepin County Department of Community Corrections and Rehabilitation; and an unsigned comment. Chair Dietzen further explained that there was an additional written submission that was received on September 7 from Andrea Barts.

#### B. In-Person Stakeholder Input

Chair Dietzen said that there were 11 people who contacted the MSGC before today and registered to give in-person stakeholder input. Chair Dietzen said that pre-registered speakers would be called first and those registering today would be called next. Chair Dietzen further explained that in-person input would be limited to five minutes to respect everyone's time and to ensure testimony was taken from each stakeholder.

Chair Dietzen called people forward to speak in order of registration, or in order of appearance at the meeting.

**Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice.** Ms. Mitchell said that the Robina Institute of Criminal Law and Criminal Justice had submitted written input, as well. Additionally, Ms. Mitchell challenged the Commission to consider its main purpose of

promoting public safety, and what it means, and how, to achieve that goal. Ms. Mitchell commended the Commission for its attention to the topic, as ongoing reassessment of the criminal history score is exactly what the Commission was created to do. Ms. Mitchell supported the Commission's proposals to end the custody status point upon discharge from probation, and said that eliminating the custody status point would resolve multiple issues with minimal public-safety impact. Ms. Mitchell suggested that the Commission could go further and eliminate the juvenile point and consider giving a "first-time offender discount" because their data show that these offenders are less likely to recidivate.

**Judge Robert Small, Minn. County Attorneys Association.** Judge Small said that, because the MCAA's Executive Committee had not met during the summer to review the Stakeholder memo, he had no formal position on the merits of the individual proposals. He opined that the current Guidelines' policies are working and not in need of drastic changes because they are rational, understandable to practitioners, and appropriately distinguish offenders. Judge Small said that the MCAA had issued a position paper on probation reform, and supported the proposal to end the custody status point upon discharge from probation. Judge Small indicated that Wadena County Attorney Kyra Ladd and Waseca County Attorney Brenda Miller were present to support his testimony and represented greater Minnesota.

**Rebekka Stumme, Assistant St. Louis County Attorney.** Ms. Stumme said that the general opinion of the attorneys in her office was that the proposals under consideration generally did not account for public safety. With respect to the proposal to eliminate the custody status point, Ms. Stumme said that people on probation are provided with valuable resources, and completely ignoring probationary status would be troubling because it would depreciate the importance of probation and its attempted impact on the reoffender's life. Ms. Stumme likewise opposed limiting the custody status point only to the most severe offenses, as it would ignore a number of severity-level 4, 5, and 6 person crimes and other crimes implicating public safety. Ms. Stumme opined that Minn. Stat. § 609.1095 adequately provides for increased penalties for repeat violent offenders. While she supported the proposal to end the custody status point upon discharge from probation, but said the Guidelines generally work and the custody status point is valuable.

**Matt Majovski, Dakota County Probation Officer.** Mr. Majovski handed out an example of a Prior Record/Criminal History report used in Dakota County. Based on the measures of practicality and simplification, Mr. Majovski supported the Commission's proposal to eliminate the custody status point, as long as it was in conjunction with introducing a custody status aggravating factor. For repeat violent offenders, Mr. Majovski supported enhancing sentence durations rather than changing the score. Mr. Majovski did not support changing the decay policy so an offense could decay while the probation continued. Mr. Majovski supported the proposal to end the custody status point upon discharge from probation.

**Rabbi Emma Kippley-Ogman, Jewish Community Action.** Rabbi Kippley-Ogman said that the Jewish Community Action's mission is to bring together Jewish people from diverse traditions and perspectives to promote understanding and take action on racial and economic justice issues in Minnesota. Rabbi Kippley-Ogman said that the meeting was taking place during the ten Days of Awe, between Rosh Hashanah and Yom Kippur, which was a time of transformation for harm caused, and for moving from judgment to mercy. She challenged the Commission to focus on public safety through transforming human actions, rather than locking human being in cages, a failed experiment. The investment being considered in increasing incarceration, she suggested, should be used for transformation instead.

**John Hall, Jewish Community Action.** Mr. Hall said that he is a community organizer of the homeless and he supported the Commission's proposal to eliminate the criminal history score on double-jeopardy grounds. Mr. Hall gave a personal account of adverse effects of criminal history. Mr. Hall said that some people commit violent crimes out of desperation, when they are in need of resources.

**Reverend Eliot Howard, ISAIAH.** Rev. Howard said that he believes people have the capacity for change, to repent and find a new path. That repentance is not always consistent does not alter the hope of true change. Rev. Howard said that he believed in mercy and that people who forgive are not weak.

**Brian Fullman, ISAIAH.** Mr. Fullman said he is a community organizer who has established two community initiatives. Speaking from his own personal experience, he said that was his duty as a Christian man to invest in the people of Minnesota. Mr. Fullman supported alternative programming, would like to consider the Commission's proposals, and offered his help to the Commission. Mr. Fullman offered his own example of transformation and community contribution, and encouraged the Commission not to operate out of fear.

**William Ward, State Public Defender.** Mr. Ward said that the Board of Public Defense represents 80 percent of felons in the State of Minnesota. Citing data from the Department of Corrections' 2016 Earned Compliance Credit report, which he participated in, Mr. Ward pointed out the geographical variation in durations of probation and early discharge in the state, which he described as systematic discrimination. Regarding Ms. Stumme's comments, Mr. Ward said that the quality of probation in St. Louis County is higher, and the durations are shorter, than elsewhere. He said that he supported the Commission's proposal that would eliminate the custody status point but opposed the proposal to increase sentences for severe violent offenders, which he characterized as a gesture of discrimination.

**Jasmine Carey, Council for Minnesotans of African Heritage.** Ms. Carey, the Legislative Coordinator, read a letter from the Council on behalf of Executive Director Justin Terrell. The Council for Minnesotans of African Heritage opposed the severe violent offender proposal

because it would disproportionately impact the African Heritage community and increase the already overrepresented population of its constituents, citing, in particular, to Table 9 of the Appendix of the Chair's memo to stakeholders, which, Ms. Carey said, showed that the projected prison bed increase for the African Heritage community was 72 percent. The Council disputed the sufficiency of "blameworthiness" as standard for justifying such change. Ms. Carey gave MSGC a copy of the letter from Executive Director Terrell.

**Tyra Thomas, Street Voices of Change.** Ms. Thomas said that she worked with people who experience homelessness. She said that the majority were African American men who were homeless because of their criminal records. Ms. Thomas was opposed to the Commission's severe violent offender proposal to add 52 prison beds because of the high racial disparity. She compared the law enforcement response to crack cocaine in the 1980s to the treatment-based response to opiates today, and questioned whether race was a factor.

Ms. Gina Evans had registered to speak but did not come forward when her name was called two times.

Chair Dietzen thanked everyone who spoke and said that additional written were welcome in the next one to two weeks.

### **C. Commission Discussion**

Chair Dietzen said that that the Commission was not making a decision today. He asked members if they wished to make any comments. Chair Dietzen said that, if the Commission wished to make a proposal, that they do so at the meeting on October 11, 2018. Chair Dietzen said that he intends to make his own proposal at the October meeting.

Commissioner Roy asked if other members could present proposals, as well. Chair Dietzen said yes.

## **5. NASC Report**

This was on the agenda as an information item.

Chair Dietzen said that the 2018 conference of the National Association of Sentencing Commissions was August 13 to 15 in Columbus, Ohio, and that he attended along with Commissioners Estrada and Wernick, and staff member Anne Wall. Chair Dietzen noted his interest in the presentation by Professor Edward Latessa, Director and Professor of the School of Criminal Justice at the University of Cincinnati.

Chair Dietzen called on Ms. Wall who spoke about the pre-conference sentencing workshop in which she was a panelist. Ms. Wall said that panelists were from different states and were given

the same sentencing scenario in which an offender was an accomplice in a residential burglary. Ms. Wall said that they were told to apply their state's sentencing guidelines. Ms. Wall noted that Minnesota's presumptive sentence was the longest compared to the other states.

## 6. 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

A recent published Minn. Supreme Court case, *State v. Scovel*, No. A16-1931, \_\_\_\_ N.W.2d \_\_\_\_, 2018 WL 3868579 (Minn. Aug. 15, 2018), held that classification of a prior offense under Guidelines § 2.B.7.a, is determined by "current" Minnesota offense definitions and sentencing policies; that is, those in effect when the defendant committed the current offense, not when the defendant was sentenced for the current offense.

### B. Timeline

If the Commission wishes to move forward a proposal to modify the Guidelines and publish it in the 2019 Report to the Legislature, the decision to place a public notice in the State Register would have to be made in October, modification language would need to be finalized in November, and the public hearing would have to occur in December.

## 7. Public Input

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

## 8. Adjournment

Chair Dietzen called for a motion to adjourn.

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

**Motion carried** unanimously.

The meeting adjourned at 2:50 p.m.