

## Approved Meeting Minutes

**December 12, 2019**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 12, 2019, in the Centennial Office Building, Lady Slipper Conference Room, 658 Cedar St., Saint Paul, MN 55155.

Present were Commission Chair Kelly Lyn Mitchell and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, Tonja Honsey, Judge Michelle Larkin, Judge Caroline Lennon, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, and Commissioner of Corrections Paul Schnell. 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 Robert Small, Minn. County Attorneys Association; Brian Jallman, ISAIAH; Will Cooley, Decarcerate; Chuck Turchick; Randy Anderson, Minn. Second Chance Coalition; Marlin Meszaros, Minn. Second Chance Coalition; Kgen Kimzu, Minn. Court of Appeals; Jay Lindgren; Ron Joki, ISAIAH; Lars Negstad, ISAIAH; Jeff Simard, Minn. Court of Appeals; Aaron Ernst, Life Rebuilders; Kelly Thune, Messerli Kramer Law Firm; Kimberly Wilburn, ISAIAH; David Foster-Bolton, ISAIAH; KC Harrison, Jewish Community Action; Safia Kahn, Department of Corrections; Raymond Dehn, State Representative; Elliot Butay, NAMI Minn.; Robert Haider, DFL House Caucus; Chas Anderson, Justice Action Network; Leslie Redmond, NAACP; and Larry Muloney, ISAIAH.

### 1. Call to Order

Chair Mitchell called the meeting to order at 1:00 p.m. A quorum was present.

### 2. Approval of Agenda

This was on the agenda as an action item.

**Motion** by Justice Dietzen and second by Mr. Orput to approve the agenda, amended to make item 8, Follow-Up on Probation Proposal, a special order of the day to begin no later than 2:15 p.m.

**Motion** by Judge Larkin and second by Justice Dietzen to reference attachment 8D, staff information paper entitled, “Commission’s Authority to Establish Guidelines for Nonimprisonment Sanctions” to item 8.D. on the current agenda.

A discussion ensued.

**Larkin motion withdrawn** by Judge Larkin.

**Dietzen motion carried.**

### **3. Approval of Draft Meeting Minutes**

This was on the agenda as an action item.

**Motion** by Commissioner Schnell and second by Ms. Middlebrook to approve the meeting minutes from November 6, 2019.

**Motion carried.**

### **4. Approval of 2020 Meeting Calendar**

This was on the agenda as a possible action item.

Director Reitz presented a draft 2020 meeting calendar, which included some date changes going forward. Director Reitz said that changing the May meeting to the first Thursday after the first Saturday would better synchronize the Commission's calendar with the legislative calendar and would always space the May meeting four weeks from the April and June meetings. Director Reitz also said that advancing the November meeting to the first Thursday, and moving the December meeting to the first Thursday after the second Saturday, would accommodate the possibility of a December public hearing, if need be, on the same date as the December meeting.

**Motion** by Ms. Estrada and second by Judge Larkin to approve the 2020 Meeting Calendar.

**Motion carried.**

### **5. Executive Director's Report**

This was on the agenda as an information item.

#### **A. Agency Budget**

Director Reitz reported that externally imposed expenses are anticipated to create agency budget shortfalls in the current and upcoming fiscal years. Director Reitz reported on staff attempts to ameliorate the deficiency, and on his proposal to the Governor to ask the Legislature for deficiency and supplemental funding to permit continued agency operations without layoffs.

## **B. Dec. 19 Public Hearing; Jan. 9 Meeting Location & Telephone Participation**

Director Reitz reminded members of the time and place of the December 19, 2019, public hearing, and of the January 9, 2020, meeting. To facilitate a quorum, Director Reitz said that telephonic participation would be available for the January 9 meeting.

## **6. 2018 Sentencing Practices Data & Impact of Drug Sentencing Reform Act**

This was on the agenda as an information item.

Director Reitz called on Senior Research Analysis Specialist Anne Wall to present the 2018 Sentencing Practices: Annual Summary Statistics for Felony Offenders.

Ms. Wall reported on the number of felony offenders sentenced in Minnesota in 2018 (18,284) nearly identical to the number of felony offenders sentenced in 2017 (18,288) which was an all-time high. Ms. Wall reported on the distribution of cases, total incarceration rates, average pronounced sentences, and departure rates. Ms. Wall also reported on the impact of the Drug Sentencing Reform Act (DSRA). Research Analysis Specialist Jill Payne presented information on the post-DSRA gross misdemeanor cases.

The Commission discussed the data presentation and asked questions.

As the time was 2:14 p.m., the Chair advanced the discussion to agenda item 8, which was a special order of the day.

## **8. Follow-Up on Probation Proposal**

### **A. Comparison of Legislation to Current Proposal**

This was on the agenda as an information item.

Chair Mitchell asked Mr. Orput if he would like to explain his handout. Mr. Orput discussed the comparison of the Commissioner's probation cap proposal to House File 2792.

A discussion followed.

### **B. Motion to Postpone Public Hearing**

This was on the agenda as a possible action item.

**Motion** by Justice Dietzen, with explanation of the reasons for the motion, and second by Mr. Orput, to postpone the December 19, 2019, public hearing indefinitely.

**A discussion ensued**, wherein members debated both the substance of the probation cap proposal and the process by which it came before the Commission for action.

**Motion failed** with 5 votes in favor and 6 votes opposed.

### **C. Motion to Rescind**

This was on the agenda as a possible action item.

Judge Larkin, who had given previous notice of a motion to rescind the Commission's November action to forward to public hearing proposal to modify the Guidelines, did not make the motion, explaining that it would have been duplicative of item 8.B.

Chair Mitchell asked the Commission if they would like Director Reitz to still discuss the staff information paper entitled, "Commission's Authority to Establish Guidelines for Nonimprisonment Sanctions." Interest was expressed. Director Reitz explained how the observations in the paper were not intended to constitute definitive legal advice or to infringe on the authority of the Commission to interpret its own charter statute. Director Reitz explained that observations were intended to serve as a starting point for the Commission's exercise of authority.

The Commission discussed the staff information paper.

### **7. Review Draft 2020 Report to the Legislature**

This was on the agenda as a possible action item.

Chair Mitchell called on Director Reitz, who reviewed parts of the Draft 2020 Report to the Legislature with the Commission and received editorial suggestions from Commission members.

### **9. Working Group/Task Force Reports**

This was on the agenda as an information item.

In light of the time, Chair Mitchell moved this item to the January 9, 2020, agenda, without objection.

### **10. Public Input**

Chair Mitchell called on members of the public present and asked if anyone wished to speak. One member of the public came forward.

Leslie Redmond, President of the Minneapolis National Association for the Advancement of Colored People (NAACP) and former policy research associate for Attorney General Keith Ellison, thanked the Commission for moving forward with the public hearing. She stated that it is time for reform and justice delayed is justice denied. She requested that moving forward, public input should be in the beginning of the Commission meetings to allow everyone from the public a chance to speak at an earlier time and engage authentically. She also stated that the NAACP is in support of the probation cap proposal.

## **11. Adjournment**

**Motion** by Commissioner Schnell and second by Justice Dietzen to adjourn.

**Motion carried.**

The meeting adjourned at 3:33 p.m.