

Approved Meeting Minutes

February 14, 2019

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on February 14, 2019, in the Centennial Office Building, Lady Slipper Conference Room, 658 Cedar St., Saint Paul, MN 55155.

Present were Commission Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Paul Schnell, Senior Judge Mark Wernick, Valerie Estrada, and Yamy Vang.

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

Members of the public present included Stephen Montemayor, *StarTribune*; Kevin Featherly, *Minnesota Lawyer*; Matt Majovski, Dakota County Community Corrections; Rep. Carlos Mariani, Chair of the House Public Safety and Criminal Justice Reform Finance and Policy Division; and Jamael Lundy, Committee Administrator of the House Public Safety and Criminal Justice Reform Finance and Policy Division.

1. Call to Order

Vice-Chair Schellhas called the meeting to order at 1:30 p.m.

Vice-Chair Schellhas recognized the possible attendance of Rep. Carlos Mariani, who planned to discuss the House File 997 bill that has the potential for the Commission to look at making some recommendations with respect to probation periods. She asked if anyone on the Commission objected to suspending the agenda at the time to accommodate Rep. Mariani. There were no objections.

2. Approval of Agenda

This was on the agenda as an action item.

Motion by Commissioner Schnell 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 Ms. Middlebrook to approve the meeting minutes from January 10, 2019.

Motion carried unanimously.

4. 2019 Work Plan Update

This was on the agenda as a discussion item.

A. Overview of Severity Level Rankings

Vice-Chair Schellhas called on Director Reitz, who updated the Commission on the 2019 Work Plan.

Executive Director Reitz presented: 1) *Staff Issue Paper: Assigning Severity Levels*. Executive Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options. One possible path that the Commission could follow is to undertake a comprehensive re-ranking project; 2) An excerpt from Senate File 111 regarding criminal sexual conduct crimes provisions modifications. Section 18 is asking the Commission to look particularly at child pornography offenses to determine if they are ranked appropriately and various statutory maximums; 3) *Staff Issue Paper: Receiving Stolen Motor Vehicles and Receiving Stolen Controlled Substances*. Executive Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options; 4) *Staff Issue Paper: Theft of \$500, but more than \$1,000, and Previous Conviction*. Executive Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options; and 5) The most common unranked Offenses and how unranked offenses could potentially be ranked if the Commission sought to do so.

After determining there were no objections, Vice-Chair Schellhas asked staff to research and present the data on unranked offenses that are being prosecuted more frequently.

B. Probation

Vice-Chair Schellhas called on Director Reitz, who reported on various items regarding probation: 1) He presented Appendix 2 of the *2017 Probation Revocations: Offenders Sentenced from 2012-2016 Revoked to Prison through 2017*; 2) Study of Earned Compliance Credit: Recommendations for Minnesota; 3) Kelly Mitchell, Robina Institute of Criminal Law and Criminal Justice provided *Probation Sentencing In-Depth (2010-2015)*; 4) Kelly Mitchell also

provided *Rethinking Felony Probation Terms in Minnesota*; 5) *Minnesota County Attorneys Association's Position Regarding Probation Reform*; 6) House File 689; and 6) House File 997.

C. Use of Non-Minnesota vs. Minnesota Offenses in the Criminal History Score (*Strobel*) and other technical issues

Vice-Chair Schellhas called on Director Reitz, who discussed *State v Mouelle* (February 6, 2019) and a possible recommendation by the Commission to the legislature regarding there being no defined statutory minimum or maximum term of confinement for an offender who is imprisoned for 1st degree murder of an unborn child. Another issue is *State v Scovel* (August 15, 2018) and *State v Strobel* (November 19, 2018), regarding prior offenses and what offense definitions are supposed to apply.

5. Legislative Update & Executive Director's Report

This was on the agenda as an information item.

Vice-Chair Schellhas called on Director Reitz who reported: (1) there was nothing yet to report on the status of the Commission's 2019 legislative recommendation regarding prospective application of Guidelines modifications; (2) he had detected no opposition to the proposed 2019 Guidelines modifications when testifying before either the House or Senate crime committees; (3) Governor Walz's office reported that the Governor is prioritizing appointments for the MSGC membership; (4) the first legislative deadline is March 15, 2019; and (5) Senior Judge Mark Wernick has announced that he will be resigning from the Commission effective March 15, 2019.

6. Public Input

Vice-Chair Schellhas called on members of the public present and asked if anyone wished to speak.

Matt Majovski from Dakota County Community Corrections, addressed the Commission with some general comments about the future 2019 Work Plan. Mr. Majovski agreed with *Staff Issue Paper: Receiving Stolen Motor Vehicles and Receiving Stolen Controlled Substances* and believes those offenses involving receiving stolen motor vehicles should be ranked at a severity level 3 and severity levels should be different if the value of the vehicle is high. He also thinks *Theft of \$500, but more than \$1,000, and Previous Conviction* should be ranked at a severity level 1 and unranked offenses should remain unranked because those severity levels are based on the facts of the offense. He asked the Commission if there could be better training amongst other jurisdictions when modifications to the guidelines are approved.

Commissioner Schnell took this opportunity to discuss the Parole Board and MSG Commission's role and possible scope regarding the Parole Board.

A 5-minute recess was called at 2:42pm. The meeting was called back to order at 2:47pm.

Rep. Carlos Mariani, Chair of the House Public Safety and Criminal Justice Reform Finance and Policy Division, addressed the Commission. Rep. Mariani noted his committee's oversight role over the Commission, and discussed his generally applicable philosophy of public safety and criminal justice reform, which was: 1) to use a community-centered public safety approach; 2) to use an equity approach; and 3) to use a bipartisan approach.

He then addressed the issue of probation reform. Rep. Mariani said that inequities have mounted in the use of probation that are having a grossly disparate impact on communities of color, indigenous communities, and regional communities in Minnesota, compounded by overly long probationary times. Rep. Mariani expressed his belief that the Commission has the statutory authority to act on providing strong guidelines and expectations to address these probation inequities, and insisted that the Commission act to embrace that authority, with or without the currently advancing legislation that would emphasize it (House File 997). Rep. Mariani said his presence before the Commission was not about trying to disengage the Commission from its value of being free from political influence, but about insisting that the Commission fulfill its duty to address these real-world inequities; to do so, he said, is within the Commission's scope, power, and duty, and within the shared moral values of the State.

Vice-Chair Schellhas thanked Rep. Mariani for coming to the meeting.

7. Adjournment

Motion by Commissioner Schnell to adjourn. The motion was seconded.

Motion carried unanimously.

The meeting adjourned at 3:05 p.m.