

Approved Meeting Minutes

March 14, 2019

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

Present were Commission Chair Justice (Ret.) Christopher Dietzen and Commission members Valerie Estrada, Judge Caroline Lennon, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, Commissioner of Corrections Paul Schnell, 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 and Monty Schunk and Mariana Schunk, Parents of Murdered Children – Minnesota Hope Chapter.

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 Commissioner Schnell and second by Judge Wernick 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 Judge Lennon and second by Ms. Middlebrook to approve the meeting minutes from February 14, 2019.

Motion carried unanimously.

4. The Minnesota Corrections Board and the Minnesota Sentencing Guidelines Commission

This was on the agenda as an information item.

Chair Dietzen called on Executive Director Reitz who presented *Staff Issue Paper: The Minnesota Corrections Board and the Minnesota Sentencing Guidelines Commission*. Executive Director Reitz reviewed the information paper that was requested after the Commission's February 14, 2019, meeting wherein the Commission discussed its role in making parole decisions. Director Reitz presented some historical and statutory information on the topic.

Commissioner Schnell updated the Commission on House File 2128, which would establish an indeterminate sentence release board and amend Minn. Stat. § 244.05, subd. 5.

Chair Dietzen asked Commissioner Schnell if there was anything further the Commissioner requested from the Commission. Commissioner Schnell replied in the negative, saying that this was an issue of governance and he appreciated the Commission looking into it.

5. **Murder of Unborn Child in the First Degree: Undefined Minimum Term for Life Sentences**

This was on the agenda as a discussion item.

Chair Dietzen called on Executive Director Reitz who presented *Staff Issue Paper: Murder of Unborn Child in the First Degree: Undefined Minimum Term for Life Sentences*. Executive Director Reitz discussed *State v Mouelle* (Minnesota Supreme Court, February 6, 2019) and a possible recommendation by the Commission to the Legislature regarding lack of a defined statutory minimum or maximum term of confinement for an offender who is imprisoned for 1st Degree Murder of an Unborn Child. Also, because Murder of Unborn Child in the First Degree is missing from the list of mandatory life sentences for which the MSGC is required to collect sentencing worksheets, it is not clear whether the MSGC is required, or authorized, to collect sentencing worksheets for that offense.

The Commission discussed three possible options including: 1) taking no action; 2) making a general recommendation to the Legislature to define some minimum term of imprisonment for Murder of Unborn Child in the First Degree; and 3) making a specific recommendation that the Legislature define a particular minimum term of imprisonment for Murder of Unborn Child in the First Degree.

Members present agreed that the best option would be to make a general recommendation to the Legislature. Because the agreement appeared to be unanimous, the Commission discussed whether it should take immediate action.

Motion by Judge Wernick and second by Ms. Vang to move that the Commission waive its informal rule against taking action on a topic at the same Commission meeting at which the topic was introduced.

The Commission engaged in discussion about procedures.

Motion carried unanimously.

Motion by Mr. Orput and second by Commissioner Schnell to approve the draft resolution recommending that the Legislature define a minimum term of imprisonment for Murder of Unborn Child in the First Degree.

As part of the motion, the Commission directed staff to send the resolution to the chairs of the House and Senate with jurisdiction over criminal justice policy.

Motion carried unanimously.

6. Unranked Offenses

This was on the agenda as a discussion item.

A. Accomplice After the Fact

Chair Dietzen called on Executive Director Reitz who presented an excerpt from *2017 Unranked Offenses: Frequency and Severity of Unranked Offenses Sentenced 1981–2017*. Director Reitz also referred to the *Staff Issue Paper: Existing Offense Modifiers*.

The Commission discussed the possible modifications and decided unanimously to take no action at this time on ranking accomplice after the fact offenses.

B. Counterfeiting Currency

Chair Dietzen called on Executive Director Reitz who presented *Staff Issue Paper: Unranked Offense: Counterfeiting Currency under Minn. Stat. § 609.632*. Executive Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options.

After determining there were no objections, Chair Dietzen asked staff to research and present the data on analogous offenses of counterfeiting currency, such as, check forgery and transaction card fraud, at the next Commission meeting.

C. Escape from Electronic Home Monitoring

Director Reitz called on Senior Research Analyst Specialist Jill Payne to present *Staff Issue Paper: Unranked Offense: Felony Escape from Electronic Home Monitoring (EHM) under Minn. Stat. § 609.485*. Ms. Payne reviewed the background, policies, questions for the Commission, and possible reform options.

The Commission discussed the staff issue paper, asked questions, and made suggestions. After determining there were no objections, Chair Dietzen asked staff to research and present

additional information on concurrent and consecutive sentencing regarding EHM at the next Commission meeting.

7. Guidelines Covering Conditions of Stayed Sentences

This was on the agenda as a discussion item.

Chair Dietzen called on Executive Director Reitz who presented *Staff Issue Paper: Guidelines Covering Conditions of Stayed Sentences*. Director Reitz discussed a summary of the Commission's actions in the 1980s regarding the development of guidelines covering conditions of stayed sentences, also referred to as "nonimprisonment guidelines."

The Commission discussed its authority to develop guidelines covering conditions of stayed sentences and setting maximum probation lengths.

The Commission directed staff to present information on other states and probation guidelines at its next meeting.

8. Legislative Update

This was on the agenda as an information item.

A. Senate File 1441/House File 2045

Chair Dietzen called on Executive Director Reitz who updated the Commission about Senate File 1441 and House File 2045, which states the Commission's 2019 legislative recommendation regarding prospective application of Guidelines modifications. Director Reitz has detected no opposition to the proposed 2019 Guidelines modifications.

B. Fiscal Impact Statement, House File 997

Executive Director Reitz informed the Commission about MSGC's fiscal impact statement regarding House File 997 and discussed the potential agency budget changes necessary if House File 997 passed.

C. Review of Other Bills Meeting First Committee Deadline

Executive Director Reitz updated the Commission on legislative action that may be of importance to the Commission. This included updates on HF 1947 – Establishing a Parole Board and HF 2013 – Marijuana Offenses Thresholds Adjusted. Director Reitz told the Commission that MSGC staff have received 39 fiscal notes, and that Friday, March 29, 2019 is the Legislature's 2nd Committee deadline in which committees must act favorably on bills, or companions of bills, that met the first deadline in the other body.

D. Status of Demographic Impact Statements

Executive Director Reitz explained to the Commission that several Demographic Impact Statements were sent to Chair Mariani and Chair Limmer and their respective Committee Administrator.

9. Executive Director's Report

This was on the agenda as an information item.

Chair Dietzen called on Executive Director Reitz who reported on three items: 1) he presented the budget in front of the Senate Judiciary Committee and Justice Dietzen testified about S.F. 1441; 2) Governor Walz may have possible action by the end of the month regarding Commissioner appointments; and 3) the necessary modifications for the Electronic Worksheet System (EWS) are being prepared for implementation by August 1, 2019, concerning the 2019 Guidelines modifications.

10. Recognition of Service – Outgoing Commission Member(s)

Chair Dietzen recognized Judge Mark Wernick's service to the Commission from 2015 through 2019, also pointing out his distinguished career as a judge, a public defender, a private practitioner, a legal instructor, and a community servant. Chair Dietzen thanked Judge Wernick. Members, staff, and the public joined in applause in recognition of Judge Wernick's many achievements. In turn, Judge Wernick thanked Chair Dietzen, the Commission, and staff.

11. Public Input

Chair Dietzen 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 a general comment about the future 2019 Work Plan. Mr. Majovski agreed with the Commission's discussion regarding *Staff Issue Paper: Guidelines Covering Conditions of Stayed Sentences* and believes in modifying probation lengths, but not taking the discretion out of the probation agents' hands when it comes to specific probation guidelines.

Chair Dietzen thanked Matt for coming to the meeting.

12. Adjournment

The meeting adjourned at 3:33 p.m.