

## Approved Meeting Minutes

**May 9, 2019**

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An orientation workshop and meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on May 9, 2019, in Centennial Office Building, Lady Slipper Conference Room, 658 Cedar St., St. Paul, MN 55155.

### **Orientation Workshop**

An orientation workshop was held from 12:00 p.m. to 1:15 p.m.

Present were Commission Chair Kelly Lyn Mitchell, Vice-Chair Judge Heidi Schellhas, and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, Tonja Honsey, 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 Jasperson, Linda McBrayer, Kathleen Madland, Jill Payne and Anne Wall.

Executive Director Reitz welcomed new Commission members, including Commission Chair Kelly Lyn Mitchell and Commission members Abby Honold and Tonja Honsey. Minnesota Sentencing Guidelines Commission staff introduced themselves to the new members. Member logistics were discussed and an overview of the Minnesota Sentencing Guidelines Commission was presented.

There was a 15 minute break.

### **Commission Meeting**

The Commission meeting was scheduled from 1:30 p.m. to 3:30 p.m.

Present were Commission Chair Kelly Lyn Mitchell, Vice-Chair Judge Heidi Schellhas, and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, 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 Jasperson, Linda McBrayer, Kathleen Madland, Jill Payne and Anne Wall.

Members of the public present included Lars Negstad, ISAIAH.

## 1. Call to Order

Chair Mitchell called the meeting to order at 1:30 p.m. and again welcomed new Commission members. Chair Mitchell called on Director Reitz, who made some remarks recognizing Justice Dietzen's leadership of the Commission, as its Chair from 2015 to 2019, in its accomplishment of a number of important sentencing reforms. Chair Mitchell presented Justice Dietzen with a plaque acknowledging this service. Members, staff, and the public joined in recognizing Justice Dietzen for his achievements.

## 2. Approval of Agenda

This was on the agenda as an action item.

Chair Mitchell wished to add an item to the agenda: "Meeting Calendar" before number 12, "Adjournment."

**Motion** by Commissioner Schnell and second by Ms. Middlebrook to approve the meeting agenda, **as amended**.

**Motion carried** unanimously.

## 3. Approval of Meeting Minutes

This was on the agenda as an action item.

**Motion** by Mr. Orput and second by Ms. Estrada to approve the meeting minutes from March 14, 2019.

**Motion carried** unanimously.

## 4. Review of Discussion Notes from April 11, 2019

This was on the agenda as a discussion item.

Chair Mitchell called on Executive Director Reitz who presented staff's discussion notes for the April 11, 2019, discussion. Director Reitz explained that these notes were being provided in lieu of meeting minutes, as there was no official meeting on April 11 due to lack of a quorum, resulting from inclement weather.

## 5. Repeat Severe Violent Offender – Clarification on Prior Qualifying MD/GM

This was on the agenda as a possible action item.

Chair Mitchell called on Executive Director Reitz who presented staff issue paper entitled, “Prior Severe Violent Offenses Converted to Misdemeanors or Gross Misdemeanors.” Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options.

First, the Commission discussed the various options.

**Motion** by Justice Dietzen and second by Mr. Orput to give public notice of the Commission’s intent to clarify that stays of imposition qualify as prior severe violent offenses, but sentences within misdemeanor or gross misdemeanor limits do not qualify, as described in the Staff Issue Paper, Appendix 3.

**The Commission discussed the motion.**

**Motion carried** with 8 votes in favor, 1 against, and 1 abstention.

Second, the Commission discussed the effective date.

**Motion** by Vice-Chair Schellhas and second by Sergeant Omari to move that the effective date be August 1, 2019.

**The Commission discussed the motion.**

**Motion carried** unanimously.

## **6. Issues Related to Escape from Custody**

This was on the agenda as a possible action item.

Chair Mitchell called on Director Reitz, who called on Senior Research Analyst Specialist Jill Payne to present a staff issue paper entitled, “Escape from Custody under Minn. Stat. § 609.485.” Ms. Payne reviewed the background, policies, questions for the Commission, and possible reform options.

First, the Commission discussed assigning a severity level to the current unranked offense of Escape from Electronic Home Monitoring.

**Motion** by Vice-Chair Schellhas and second by Mr. Orput to move that the Commission give public notice of its intent to assign the offense of Escape from Electronic Monitoring a Severity Level of 3 and make resulting technical modifications to Minn. Sentencing Guidelines §§ 5.A and 5.B, as shown below.

**The Commission discussed the motion.**

**Motion carried** unanimously.

**Section 5.A. Offense Severity Reference Table**

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

\* \* \*

Severity Level	Offense Title	Statute Number
Unranked	Escape from Electronic Home Monitoring	609.485, subd. 4(f)

\* \* \*

Severity Level	Offense Title	Statute Number
<u>3</u>	Escape from Electronic Monitoring	609.485, subd. 4(f)

**5.B. Severity Level by Statutory Citation**

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

\* \* \*

Statute Number	Offense Title	Severity Level
609.485 subd. 4(f)	Escape from Electronic Home Monitoring	Unranked <u>3</u>

\* \* \*

Second, the Commission discussed apparent Guidelines conflicts that may arise in connection with escape while on supervised release.

**Motion** by Ms. Middlebrook and second by Commissioner Schnell to move that the Commission make conforming changes to Minn. Sentencing Guidelines §§ 2.C, 2.F.1, 2.F.2, and Appendix 1, as shown below.

**The Commission discussed the motion.**

**Motion carried** unanimously.

**[2]C. Presumptive Sentence \* \* \***

3. Finding the Presumptive Sentence for Certain Offenses. \* \* \*

- e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, or assault on secure treatment facility personnel is commitment. ~~It~~ Pursuant to section 2.F.1, it is presumptive for escape from an executed ~~sentence~~ term of imprisonment and for felony assault committed by an inmate serving an executed term of imprisonment to be sentenced consecutively to the offense for which the inmate was confined. The presumptive duration is determined by the presumptive sentencing consecutive policy (see section 2.F.1, Presumptive Consecutive Sentences).

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**[2]F. Concurrent/Consecutive Sentences** \* \* \*

1. Presumptive Consecutive Sentences.

- a. Criteria for Imposing a Presumptive Consecutive Sentence. Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender was, at the time of the current offense:

- (i) serving an executed term of imprisonment, disciplinary confinement, or reimprisonment; or
- (ii) on escape status from an executed term of imprisonment, disciplinary confinement, or reimprisonment; and

(2) the presumptive disposition for the current offense(s) is commitment.

- b. Finding the Presumptive Disposition. ~~The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment. In all other cases, the~~ The presumptive disposition is determined using the criteria in section 2.C. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.

\* \* \*

**2.F.102.** *When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense.*

*For example, an offender is convicted of Escape from Custody and First-Degree Burglary of an Occupied Dwelling following escape from an executed ~~sentence~~ term of imprisonment. The term of imprisonment remaining on the original offense from which the offender escaped is 18 months. Each of the new offenses will have a presumptive consecutive sentence duration found at a Criminal History Score of 1: Escape from Custody (Severity Level 3), 13 months; Burglary (Severity Level 6), 27 months. The two sentences will run concurrently to each other, and the longer of the two durations will be added to the time remaining on the original term of imprisonment (here, 27 months will be added to the time remaining on the original 18-month sentence). Aggregated, the new presumptive consecutive sentence duration is 45 months.*

\* \* \*

## 2. Permissive Consecutive Sentences.

- a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. \* \* \*

- (1) Specific Offenses; Presumptive Commitment. \* \* \*

- (iii) Felony Conviction After Escape (Non-Executed Sentence). If the offender commits and is convicted for a new felony crime while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from a non-executed felony sentence, the new felony conviction may be sentenced consecutively to the sentence for the escape or the offense for which the offender was confined.

- (2) Other Offenses. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.

- (i) Felony Escape. If the offender is convicted of felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – and the offender did not

escape from an executed ~~prison sentence~~ term of imprisonment, disciplinary confinement, or reimprisonment (see section 2.F.1.a.(1)(ii)), the escape may be sentenced consecutively to the sentence for which the offender was confined.

- (ii) Felony Conviction After Escape (Executed Sentence). If the offender committed and is convicted for a new felony crime committed while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from an executed felony sentence, the new felony may be sentenced consecutively to the sentence for the escape.

\* \* \*

### **Appendix 1. Mandatory and Presumptive Sentences Reference Table**

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

Presumptive disposition. Commitment.

Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.

Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See section 2.G for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

\* \* \*

<b>Statute</b>	<b>Offense</b>	<b>Prerequisite or Conditions</b>	<b>Minimum Duration</b>
609.485	Escape	<del>Offense committed during "Term of Imprisonment"</del> <u>portion of Escape from</u> executed sentence	Grid Time

\* \* \*

Lastly, the Commission discussed the effective dates of the reforms.

**Motion** by Sergeant Omari and second by Justice Dietzen to move that the effective date for the ranking of Escape from Electronic Monitoring be August 1, 2020, and the effective date for the changes to Minn. Sentencing Guidelines §§ 2.C, 2.F.1, 2.F.2, and Appendix 1 be August 1, 2019.

**The Commission discussed the motion.**

**Motion carried** unanimously.

## **7. Theft Offenses – Issues and Draft Solutions**

This was on the agenda as a discussion item.

Chair Mitchell called on Executive Director Reitz who presented a briefing entitled, “Theft Offenses – Issues and Draft Changes.” The Commission discussed the issues related to theft offenses but not the draft changes. The Commission reserved further discussion of theft offenses as part of its possible work plan on a future agenda. In June, the Commission wished to discuss one issue raised in the briefing: the removal of an ambiguity from Minn. Sentencing Guidelines § 2.B.1.h.

## **8. Ranking Counterfeiting Currency**

This was on the agenda as a possible action item.

Chair Mitchell and the Commission agreed to move this subject to a future agenda.

## **9. Technical Modifications to the 2019 Sentencing Guidelines and Commentary**

This was on the agenda as a discussion item.

Director Reitz called on Senior Research Analyst Specialist Jill Payne to present staff-drafted Sentencing Guidelines changes entitled, “Technical Modifications to the 2019 Guidelines and Commentary.” Ms. Payne reviewed apparent technical errors and inconsistencies in the 2018 Minn. Sentencing Guidelines. Ms. Payne also reviewed apparent technical errors and inconsistencies in the proposed amendments to the 2019 Minn. Sentencing Guidelines that appear in the 2019 Report to the Legislature. She discussed staff recommendations for corrections drafted for the Commission’s consideration. Ms. Payne said that draft language will be presented at the June meeting at which time the Commission may move it to public hearing.

## **10. Executive Director’s Report & Legislative Update**

This was on the agenda as an information item.

Chair Mitchell called on Executive Director Reitz who presented recent data from the Bureau of Justice Statistics on states’ imprisonment rates. Director Reitz noted that in 2017, for the first time



since the establishments of Sentencing Guidelines, Minnesota's imprisonment rate was the fifth-lowest in the nation (having theretofore been generally among the bottom three). He also presented written updates of relevant policy provisions being considered by the Public Safety Conference Committee, and the status of other bills related to felonies or sentencing policy.

Director Reitz called on Management Analyst 4 Linda McBrayer who briefed the Commission on a Sentencing Guidelines delegation from Kosovo who wished to meet with members and staff of Minnesota's Commission, and experts from Robina Institute of Criminal Law and Criminal Justice.

## **11. Public Input**

Chair Mitchell noted that there were no members of the public present at the time of this agenda item.

## **12. Meeting Calendar**

Chair Mitchell discussed the Commission's 2019 meeting calendar. Chair Mitchell explained that she would be absent from the meeting planned for November 14, 2019, due to schedule conflicts. She asked if there were objections to holding the meeting November 7, 2019.

**Motion** by Mr. Orput and second by Ms. Estrada to change the November Commission meeting date from November 14, 2019 to November 7, 2019.

The Commission discussed the motion and decided it was best to consult their calendars and then finalize the November meeting date when they met again in June.

**Mr. Orput withdrew his motion.**

## **13. Adjournment**

The Chair adjourned the meeting at 3:36 p.m., without objection.