

Approved Meeting Minutes

November 6, 2019

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on November 6, 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. All members of the Commission were present. 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 Miranda Dugi, Assistant U.S. Attorney; Laura Provinzino, Chief, Major Crimes Unit, U.S. Attorney's Office; Assistant Special Agent in Charge (ASAIC) Josh Florell, Bureau of Criminal Apprehension; Special Agent Katie Booth, Bureau of Criminal Apprehension; Officer Dale Hansen, Minneapolis Police Department; Cheri Townsend, Criminal Division Head, Dakota County Attorney's Office; Randy Anderson, Minnesota Second Chance Coalition; Robert Small, Minn. County Attorneys Association; Jeff Simard, Minn. Court of Appeals; Kgen Kimzu, MN Court of Appeals; Mike Hermanson, Minn. House; John Hultquist, Minn. House; Heather Evans-Salmi, CSCSRWG; Lars Negstad, ISIAAH; Safia Khan, Department of Corrections; Justin Terrell, Council for Minnesotans of African Heritage; and Jennifer Schroeder, LADC Wayside Recovery Center.

1. Call to Order

Before calling the meeting to order, Chair Mitchell took this opportunity to welcome Judge Michelle Larkin to the Commission. Chair Mitchell asked members of the Commission to introduce themselves and Executive Director Reitz introduced himself and the staff.

Chair Mitchell called the meeting to order at 1:03 p.m.

2. Approval of Agenda

This was on the agenda as an action item.

Chair Mitchell asked if there were any changes to the draft agenda. Chair Mitchell entertained a motion to approve.

Motion by Commissioner Schnell and second by Judge Lennon to approve the meeting agenda.

Motion carried.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Chair Mitchell asked if everyone had an opportunity to review the draft minutes. Executive Director Reitz apologized for the delay in emailing the draft minutes the day before the meeting rather than a week before the meeting with the other materials. Chair Mitchell entertained a motion to approve.

Motion by Ms. Middlebrook and second by Ms. Honsey to approve the meeting minutes from October 10, 2019.

Motion carried.

4. Working Group/Task Force Reports

This was on the agenda as an information item.

A. Criminal Sexual Conduct Statutory Reform Working Group

Chair Mitchell called on Ms. Honsey to give an update about the Criminal Sexual Conduct Statutory Reform Working Group. Ms. Honsey said that she is on the subcommittee for the age statute and that they have met once; that there is proposed legislation to modify the age statute and discussion surrounding why not to modify the statute; and they are meeting again next week. Director Reitz said that he sat on the capacity subcommittee and that there were interesting discussions about state of mind and general objections to the current statute.

B. Community Competency Restoration Task Force

Chair Mitchell called on the Commission member appointed to the Community Competency Restoration Task Force, Ms. Middlebrook, to discuss the task force. Ms. Middlebrook said that the last meeting was October 30th, and that they heard from individuals and were presented case studies about the competency process. They were also given a summary of all the counties that had up to 25 Rule 20 admissions; discussed what the process is for each of those counties; and what procedures and programs they have in place. The process for Rule 20 screening in the 6th judicial district was informative for looking at a future model. They also looked at possible reasons for the increase of incompetency cases in the criminal justice system.

5. Comprehensive Review of Child Pornography Sentencing

This was on the agenda as an information and a discussion item.

A. Recidivism Research – Status Update

The Chair called on Director Reitz, who called on Senior Research Analysis Specialist Jill Payne who presented an update on the status of the recidivism research. Staff has determined that a recidivism study is feasible, and the next steps would be to make a special request to the Bureau of Criminal Apprehension (BCA) for the criminal history records and a special request to the Department of Corrections for the prison release data. Staff estimate that after we receive that data it would take about 3 months to review the data, analyze it, and report back to the Commission.

In response to a question about the feasibility and expected outcome of such a study, Ms. Payne said that staff identified about 600 child pornography offenders and Use of Minors in a Sexual Performance offenders and the plan was to make those data requests and anticipate tracking the criminal history for those individuals for 5 years.

Director Reitz also stated a potential issue that could expand the length of time would be if staff also looked at a comparison group. Ms. Payne stated that staff could also use an already published recidivism study as a base line to compare our recidivism study.

Chair Mitchell asked the Commission if they wanted staff to pursue the recidivism study research. There were no objections.

B. Use of Minors in Sexual Performance – Frequency of Co-Occurring Crimes

Director Reitz presented staff information paper entitled, “Use of Minors in Sexual Performance: Sentencing Co-Occurring Offenses.” Director Reitz discussed information about other felony offenses charged in conjunction with Use of Minors in Sexual Performance, and the sentencing outcomes when co-occurring offense are charged.

C. Interstate Review of Child Pornography Sentencing

Director Reitz stated we had asked 3 comparable guidelines states, Oregon, Washington, and Kansas, how their jurisdiction handles Child Pornography offenses and questions regarding policy, but we are still waiting on that information. Director Reitz presented staff information paper entitled, “Statutorily Permissible Punishment Ranges for Child Pornography Offenses in Other States.” Director Reitz discussed information about other states’ statutory penalties for child pornography offenses.

The Commission discussed sources of data for comparison and some members requested data from North Carolina as well, which is a potential comparable guidelines state, and any other possible guidelines states.

D. Federal Prosecutions – *Miranda Dugi, Assistant United State Attorney*

Director Reitz called on guest presenters, Miranda Dugi, Assistant United State Attorney, and Laura Provinzino, Chief, Major Crimes Unit, U.S. Attorney’s Office. Ms. Dugi and Ms. Provinzino explained the context behind federal sentencing and Child Pornography offenses. Ms. Dugi stated they have very few cases involving possession of child pornography cases unless the offender is a recidivist. A typical case they handle involves distribution, receipt, or production of child pornography. Ms. Provinzino discussed the statutory ranges and sentencing enhancements for child pornography offenses.

E. Investigations – Minnesota Internet Crimes Against Children Task Force, Bureau of Criminal Apprehension

Director Reitz called on guest presenters ASAIC Josh Florell, Bureau of Criminal Apprehension; Special Agent Katie Booth, Bureau of Criminal Apprehension; and Officer Dale Hansen, Minneapolis Police Department. Mr. Florell explained his unit is the predatory crimes unit and within that unit they are the taskforce leader for the Internet Crimes Against Children in the state of Minnesota. Mr. Hansen stated he is assigned to the crime lab and completes computer and cellphone forensics. Ms. Booth stated how she investigates individuals under the Internet Crimes against Children. These are individuals who are producing, distributing, and possessing child pornography. Mr. Hansen discussed peer-to-peer file sharing and typical cases that they investigate throughout Minnesota.

F. State Prosecutions – Cheri Townsend, Criminal Division Head, Dakota County Attorney’s Office

Director Reitz called on guest presenter Cheri Townsend, Criminal Division Head, Dakota county Attorney’s Office. Ms. Townsend reported that the state level includes many more cases that deal with dissemination or possession of child pornography. She stated how the typical case involves over thousands of images and videos as well as many victims. Ms. Townsend also discussed the charging process for the typical child pornography offense by download date or number of victims.

G. Next Steps

Director Reitz explained the next steps moving forward including the topics of dissemination and possession of child pornography.

6. Probation – Next Steps

This was on the agenda as a discussion item.

The Chair called on Commissioner Schnell, who presented a memo, dated November 5, 2019, entitled, “Proposed Guidelines Modification to Limit Probation Terms,” which contained background, observations, and conclusions regarding probation terms, as well as a proposal to modify the Sentencing Guidelines.

Motion by Commissioner Schnell and second by Ms. Honsey to move a proposal forward to public hearing on December 19, 2019, at a time and place to be determined by MSGC staff, that would amend 2019 Minn. Sentencing Guidelines sections 2.C. (Presumptive Sentence) and 3.A. (Establishing Conditions of Stayed Sentences), to take effect August 1, 2020, and to apply to crimes committed on or after that date, subject to public hearing, final adoption, and submission to the Legislature by January 15, 2020, as follows:

Proposed modifications to 2019 Minn. Sentencing Guidelines § 2.C:

[Section 2.]C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender’s criminal history score is computed according to section 2.B above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence. Section 3.A governs conditions of stayed sentences.

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Proposed modifications to 2019 Minn. Sentencing Guidelines § 3.A:

3. Related Policies

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the appropriate cell on the applicable Grid specifies a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must

pronounce the length of the stay, ~~which may exceed the duration of the presumptive prison sentence,~~ and may establish appropriate conditions. The length of the stay may exceed the duration of the presumptive prison sentence, subject to section 3.A.2.

2. Durations of Stayed Sentences. When the court stays execution or imposition of sentence for a felony offense, the length of the stay must not exceed five years or the statutory maximum term of probation, whichever is less. This limitation on the length of probation does not apply to convictions for felony homicide or sex offenses in violation of Minn. Stat. §§ 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.2662 (second-degree murder of an unborn child), 609.2663 (third-degree murder of an unborn child), 609.2664 (first-degree manslaughter of an unborn child), 609.268 (injury or death of an unborn child during the commission of a crime), 609.342 (first-degree criminal sexual conduct), 609.343 (second-degree criminal sexual conduct), 609.344 (third-degree criminal sexual conduct), 609.345 (fourth-degree criminal sexual conduct), or 609.3451 (fifth-degree criminal sexual conduct). Extensions of probation are governed by statute (see Minn. Stat § 609.135, subd. 2(g)–(h)).

23. Other Conditions of Stayed Sentences. While the Commission has otherwise chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

* * *

(6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.

A discussion ensued, wherein members debated both the substance of the Schnell motion and the process by which it came before the Commission for action.

During the discussion, Chair Mitchell asked if the Commission wished to continue discussion as the time was approaching 3:30 p.m., which was the scheduled end-time. There was no motion to adjourn.

Motion by Justice Dietzen and second by Sgt. Omari to table the Schnell motion.

Dietzen motion failed with 5 votes in favor and 6 votes opposed.

Discussion of the Schnell motion continued.

Commissioner Schnell called the question to end debate.

Discussion of the Schnell motion continued.

Motion by Ms. Middlebrook and second by Ms. Honsey to amend the Schnell motion by inserting the words “a presumptive stayed” after the words “When the court stays execution or imposition of” in the proposed modifications to section 3.A.

A discussion ensued.

Middlebrook motion withdrawn by Ms. Middlebrook.

Discussion of the Schnell motion continued.

Schnell motion carried with 6 votes in favor and 5 votes opposed.

Sergeant Omari asked that the record reflect that he was not in favor of voting today.

7. 2018 Sentencing Practices – Data Presentation

This item was on the agenda as an information item but was not called due to time constraints.

8. Introduction to 2020 Report to the Legislature – Table of Contents

This item was on the agenda as an information item but was not called due to time constraints.

9. Election of Vice-Chair

This item was on the agenda as a discussion item but was not called due to time constraints.

10. Executive Director’s Report

This item was on the agenda as an information item but was not called due to time constraints.

11. Public Input

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

Jennifer Schroeder, St. Paul resident, taxpayer, and Drug and Alcohol Counselor, spoke in favor of the proposal. Ms. Schroeder said she is serving a 40-year probation term with a stayed, 98-month prison sentence. Ms. Schroeder said she is impacted, unable to vote, and unable to find adequate housing.

Lars Negstad, Policy Director, ISAI AH, a multi-racial, state-wide, nonpartisan coalition of faith communities fighting for racial and economic justice in Minnesota, spoke in favor of the proposal and the spirit of its reform. Mr. Negstad said that he had been attending Commission meetings for some time and did not see this as an unusual process and that it is morally urgent.

Justin Terrell, Executive Director, Council for Minnesotans of African Heritage, spoke in favor of the proposal, saying it was a solution to re-enfranchise people. Mr. Terrell said that the proposal would protect public safety by expanding a black middle class. Mr. Terrell said that the Commission should run to solutions and not let the holiday season be a reason to delay justice.

12. Adjournment

Motion by Justice Dietzen to adjourn.

Motion carried without objection.

The meeting adjourned at 4:13 p.m.