

Approved Meeting Minutes

October 10, 2019

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on October 10, 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 Vice-Chair Judge Heidi Schellhas, and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, Tonja Honsey, 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, Jill Payne, and Anne Wall.

Members of the public present included Robert Haider, House DFL Caucus; Rachel Genani, House DFL Caucus; Chas Anderson, Justice Action Network; Robert Small, Minn. County Attorneys Association; and Judge Michelle Larkin, Court of Appeals.

1. Call to Order

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

Motion carried unanimously.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Chair Mitchell recognized Justice Dietzen who said he would be abstaining from the vote because he was not present at the meeting September 12, 2019.

Motion by Ms. Middlebrook and second by Ms. Honold to approve the meeting minutes from September 12, 2019.

Motion carried with 8 votes in favor, 0 votes against, and 1 abstention.

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 Director Reitz to give an update about the Criminal Sexual Conduct Statutory Reform Working Group. Director Reitz said that, in addition to Commission-appointed member Ms. Honsey, the Commissioner of Public Safety had invited Director Reitz to join the group as a member; that the group has met once as a full body; and that several subcommittees are meeting to discuss various issues related to criminal sexual conduct.

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 they have had three meetings and they are looking at what programs and services are in Minnesota regarding community competency.

5. Executive Director's Report

This was on the agenda as an information item.

A. NASC Conference Summary

Director Reitz said that the 2019 conference of the National Association of Sentencing Commissions was in Alexandria, Virginia, and that he attended along with Commissioners Honsey and Orput, and staff member Nicole Jasperson. Director Reitz said that Ms. Jasperson was a panelist at the pre-conference sentencing workshop and the panelists were from different states. Director Reitz briefly discussed some of the recent drug recidivism research presented by the U.S. Sentencing Commission, the results of which were consistent with the U.S. Sentencing Commission's older drug recidivism research, which the Minnesota Sentencing Guidelines Commission had considered in 2015.

B. Criminal Justice Institute Summary

Director Reitz said that he presented at the Criminal Justice Institute and discussed the 2019 modifications to the Sentencing Guidelines.

Director Reitz reminded the Commission that the next Commission meeting will be held on November 6th, 2019 which is a Wednesday and earlier in the month than usual.

6. *State v. Strobel*: Classifying Former Felonies in Criminal History

This was on the agenda as a discussion item.

Director Reitz presented staff issue presentation entitled, “*State v. Strobel*: Classifying Former Felonies in Criminal History.” Director Reitz discussed how the 2016 Drug Sentencing Reform Act (DSRA) changed fifth-degree controlled substance possession.

A recently published Minn. Supreme Court case, *State v. Strobel*, 932 N.W.2d 303 (Minn. 2019), held that “Offense Definitions” under Guidelines § 2.B.7.a, refers to the element-based definitions of crimes. Thus, a first-time, non-marijuana, pre-DRSA fifth-degree possession is classified as a gross misdemeanor in criminal history, per “current offense definitions,” unless the State can establish that the prior offense would have been treated as a felony based on the drug type and amount. Director Reitz discussed MSGC staff assumptions about *Strobel*’s impact and potential issues for the Commission to review in the future.

The Commission discussed the case and agreed with MSGC staff assumptions. Chair Mitchell told Commission members to think about the case and to bring up any concerns in the future.

7. Comprehensive Review of Child Pornography Sentencing Guidelines

This was on the agenda as a discussion item.

Director Reitz presented staff information paper entitled, “Answers to Questions from September Meeting.” Director Reitz reviewed the answers to three questions that were asked at the September meeting regarding: 1) charging practices in light of *State v. Bakken*; 2) criminal history scores of offenders for offenses for Possession and Dissemination of Child Pornography and Use of Minors in Sexual Performance; and 3) prior contact sex-offenses among Internet sex offenders.

Director Reitz presented staff information paper entitled, “Minnesota’s Definitions Related to Child Pornography.” Director Reitz addressed potential issues related to how Minnesota’s Statutes define child pornography.

The Commission discussed current definitions and the Commission’s role in making recommendations to the Legislature under Minn. Stat. § 244.09.

Director Reitz presented staff information paper entitled, “Sentencing of Production of Child Pornography.” Director Reitz spoke about potential issues related to how Minnesota’s Statutes criminalize the production of child pornography, and how the Sentencing Guidelines treat the offense, as may be relevant to the Commission’s “comprehensive review” mandate by the Legislature.

The Commission discussed the issue and asked questions.

Chair Mitchell emphasized that these topics were informational for the Commission; the Commission was not expected to take action or recommend action today or in future meetings without further discussion. Chair Mitchell also requested that Commission members let Director Reitz know if they think of more topics to bring to the Commission's attention.

8. Probation Guidelines/Term Limits/Revocations

This was on the agenda as a discussion item.

At this time, Chair Mitchell handed the gavel to Vice-Chair Schellhas, who presided over the next part of the meeting.

Kelly Lyn Mitchell, Executive Director of Robina Institute of Criminal Law and Criminal Justice, presented, "Reducing Racial & Regional Disparities in Probation and Sentencing." Ms. Mitchell discussed Minnesota's low incarceration rates, but high community supervision rates. Ms. Mitchell also discussed length of probation and probation revocations for Minnesota.

The Commission discussed the issue and asked questions.

Vice-Chair Schellhas handed the gavel back to Chair Mitchell, who presided over the remainder of the meeting.

9. Public Input

Chair Mitchell called on members of the public present and asked if anyone wished to speak. No one came forward.

10. Recognition of Service Hon. Heidi Schellhas, Retiring Commission Vice-Chair and Judge, Court of Appeals

Chair Mitchell recognized Hon. Heidi Schellhas with a plaque for her service to the Commission as its Court of Appeals member from 2011 through 2019, and as its Vice-Chair from 2016 through 2019, and briefly recounted her distinguished career as a judge. Chair Mitchell thanked Judge Schellhas for her service, and members, staff, and the public joined in applauding Judge Schellhas for her service and achievements. In turn, Hon. Judge Schellhas thanked Chair Mitchell, the Commission, and staff.

11. Adjournment

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

Motion carried unanimously.

The meeting adjourned at 3:19 p.m.