

Approved Meeting Minutes

April 9, 2020

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on April 9, 2020. Due to the ongoing health pandemic, it was not feasible for members of the Commission or the public to attend at the regular meeting location in Saint Paul; instead, Commission members and members of the public participated by telephone or by electronic Webex meeting, the notice required by [Minn. Stat. § 13D.021](#), subd. 4, having been posted on the MSGC website on March 30, 2020.

Present electronically were Commission Chair Kelly Lyn Mitchell and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, Tonja Honsey, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, Sergeant Salim Omari, and Commissioner of Corrections Paul Schnell. Commission member Pete Orput was prevented from successfully joining the meeting by technical difficulties. Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland, Linda McBrayer, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically included Robert Small, Minn. County Attorneys Association; Jeff Simard; Mary Liz Holberg; Max Page; Lindsay Stodola; Christina Thompson; and three unidentified call-in users.

1. Call to Order

Chair Mitchell called the meeting to order at 1:12 p.m. A quorum was present.

2. Approval of Agenda

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Ms. Middlebrook to approve the meeting agenda.

Motion carried on a 9–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Justice (Ret.) Dietzen, Ms. Estrada, Ms. Honold, Judge Larkin, Judge Mark, Ms. Middlebrook, Sergeant Omari, and Commissioner Schnell. Ms. Honsey had not yet joined the meeting.

3. Record of Compliance with the Open Meeting Law

This was on the agenda as an information item.

Director Reitz explained that the meeting was being held under Minn. Stat. § 13D.021 due to the health pandemic and declared peacetime emergency. Chair Mitchell determined, and Director Reitz concurred, that it was not feasible for members of the Commission or the public to attend at the regular meeting location in Saint Paul. Director Reitz explained some of the differences and similarities between meetings under Minn. Stat. § 13D.021 and other telephonic meetings under the Open Meeting Law.

Chair Mitchell determined, and Director Reitz concurred, that it was not feasible for anyone to attend the meeting in person due to the stay-at-home orders (Emergency Executive Orders 20-20 and 20-33), by which the usual meeting place, Lady Slipper Conference Room in Centennial Office Building, was open only to critical-sector workers. For future reference, Director Reitz reported that there is room in Lady Slipper for only 16 people so long as the current 6-foot interpersonal distancing guidance remains in place.

Director Reitz stated that since Monday, April 6, there have been posted two options for public monitoring of this meeting. Director Reitz explained that the public can call a long-distance telephone number and enter an access code on their telephones or they can monitor visually and audibly on the internet. Director Reitz stated that members of the public would remain muted throughout the meeting until the public comment portion of the meeting. Director Reitz reported that, beginning at 12:30 p.m., the Webex meeting platform was open for Commission members to test their connections, during which time no Commission business was discussed.

4. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Justice Dietzen and second by Judge Larkin to approve the meeting minutes from March 12, 2020.

Ms. Middlebrook noted that reference to Rule 20.02 (“and 20.02”) was incorrect and should be stricken from the minutes of Community Competency Restoration Task Force update. Justice Dietzen and Judge Larkin accepted this change as a friendly **amendment**.

Motion, as amended, carried on a 9–0–1 roll-call vote.

Voting “Yes” were Chair Mitchell, Justice (Ret.) Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Sergeant Omari, and Commissioner Schnell. Judge Mark abstained.

5. Approval, or Forwarding to Attorney General, of Meeting Rules

This was on the agenda as an action item.

Director Reitz discussed staff paper entitled, “Meeting Rules (Staff Draft).” Director Reitz explained that he made the changes that were discussed at the March meeting and made a change to footnote 3, regarding the number of Commission members constituting a quorum.

A discussion ensued.

Motion by Commissioner Schnell and second by Judge Larkin to forward the draft meeting rules to the Attorney General for legal review, but with the addition of the phrase “, and therefore no action may be taken,” following the words “A motion to modify the Sentencing Guidelines is out of order” in Rule 3 (First-Reading Rule).

Motion carried on a 10–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Justice (Ret.) Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Judge Mark, Ms. Middlebrook, Sergeant Omari, and Commissioner Schnell.

6. Comprehensive Review of Child Pornography Sentencing

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

A. Recap of Review to Date

Chair Mitchell called on Director Reitz who presented staff presentation entitled, “Child Pornography Sentencing: Comprehensive Review, Part 4.” Director Reitz discussed what the Commission has reviewed thus far, including an overview of the child pornography laws and sentencing practices, definitions, and information from the panel of experts from September through November, 2019.

B. Comparing Presumptive Sentences for Criminal Sexual Conduct & Child Pornography

Director Reitz continued presenting staff presentation entitled, “Child Pornography Sentencing: Comprehensive Review, Part 4.” Director Reitz presented a closer look at sex offenses and how they are ranked to see exactly how severely Guidelines rank child

pornography offenses. Director Reitz compared presumptive sentences for Criminal Sexual Conduct and Child Pornography.

C. Child Pornography Charging and Sentencing Practices

Director Reitz presented staff presentation entitled, “Child Pornography Charging and Sentencing Practices.” Director Reitz explained that staff proposed a study approach, with the guidance of the Commission, to examine the degree to which current sentencing practices for possession and dissemination might inform the Commission’s ranking decisions. Members asked questions, with no objections expressed toward staff moving forward with the proposed study.

Director Reitz announced that he had received an email from Judge Mark saying he needed to leave the meeting for personal reasons.

D. Recidivism Research Update

Director Reitz called on Senior Research Analysis Specialist Anne Wall who presented staff information paper entitled, “Recidivism for Child Pornography and Production Offenses.” Ms. Wall discussed recidivism for offenders sentenced for child pornography and production (use of minors in sexual performance) offenses sentenced from 2010 through 2015.

Chair Mitchell thanked Director Reitz and staff for their work on the Commission meeting materials and presentations.

7. Amendments to the Commentary Related to Presumptive Probation Cap

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz who presented staff information paper entitled, “Amendments to Guidelines Section 3.A Commentary in Light of Proposed 2020 Modifications.” Director Reitz stated that based on the Commission’s guidance at its March 12 meeting, staff suggested adding new comments 3.A.202 and 3.A.203.

Motion by Commissioner Schnell and second by Ms. Estrada to preliminarily approve the draft Amendments to Guidelines Section 3.A Commentary and move the Amendments to Guidelines Section 3.A commentary forward to public hearing, unless the Legislature does not permit the underlying Guidelines changes—chiefly in section 3.A—to take effect.

Motion carried on a 6–2 roll-call vote.

Voting “Yes” were Chair Mitchell, Ms. Estrada, Ms. Honold, Ms. Honsey, Ms. Middlebrook, and Commissioner Schnell.

Voting “No” were Justice (Ret.) Dietzen and Judge Larkin.

There was no response from Sergeant Omari, who had emailed Chair Mitchell and Director Reitz at 3:14 p.m. with his apologies that he had to leave the meeting.

8. Working Group/Task Force Reports

Without objection, Chair Mitchell skipped this item on the agenda. Ms. Middlebrook did, however, report that the Community Competency Restoration Task Force had not met since the Commission’s last meeting.

9. Executive Director’s Report

This was on the agenda as an information item.

Director Reitz stated that there had been little legislative activity and that the Legislature has not been meeting regularly due to the Coronavirus pandemic. Director Reitz stated that there was a proposal from the newly-appointed Ombudsperson for Corrections, Mark Haase, for the Legislature to authorize the Commissioner of Corrections to release inmates who are within 180 days of their release date during a pandemic. Director Reitz also shared a bill drafted by Representative Mariani, Chair of the House crime committee, and an amendment proposed by committee member Representative O’Neill, that would give the Commissioner of Corrections similar authority to that proposed by Mr. Haase. Director Reitz updated the Commission about the agency’s supplemental appropriations request given the fact that the fiscal situation has taken a sharp downturn since the last budget forecast was released due to the Coronavirus pandemic.

Chair Mitchell noted that Rep. Mariani’s bill also addressed provisions of the harassing and stalking laws which were declared unconstitutional, with implications for felonies.

In response to question from a Commission member at the March meeting, Director Reitz shared his September, 2019, communication with Assistant Attorney General Matt Frank regarding possible options for the timing of a public hearing.

Director Reitz recognized the approaching 40th anniversary of Minnesota Sentencing Guidelines, which took effect May 1, 1980.

10. Public Input

MSGC staff host Linda McBrayer unmuted all microphones and Chair Mitchell asked if any member of the public present wished to speak. No member of the public spoke.

11. Adjournment

The meeting adjourned at 3:42 p.m., without objection.