

## Approved Meeting Minutes

**February 13, 2020**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on February 13, 2020, 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, Abby Honold, Tonja Honsey, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, and Commissioner of Corrections Paul Schnell. Also present were MSGC staff members Nicole Jasperson, Kathleen Madland, Jill Payne, and Anne Wall.

Members of the public present included Barbara Carson; Robert Small, Minn. County Attorneys Association; Malaysia A., Hennepin County; Chuck Turchick; Anita Alexander, ISAIAH; and Kgen Kimzu, Minn. Court of Appeals.

### 1. Call to Order

Chair Mitchell called the meeting to order at 1:02 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 Judge Larkin to approve the meeting agenda.

**Motion carried.**

### 3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

**Motion** by Ms. Honold and second by Ms. Middlebrook to approve the meeting minutes from January 9, 2020.

**Motion carried.**

#### **4. Draft Meeting Materials Availability to the Public**

This was on the agenda as a discussion item.

Chair Mitchell reminded the Commission about the testimony of a member of the public asked that the meeting materials be made available to the public in advance of the Commission meeting date. Chair Mitchell stated that meeting materials have been posted to the public a month later, when the meeting minutes are approved by the Commission. Chair Mitchell asked the Commission if there were any objections to making the materials available to the public at the same time the Commission members receive the meeting materials.

A discussion ensued.

While noting the concerns expressed, the Chair also noted that no Commission member expressed an outright objection to the request. The Chair directed staff to make the meeting materials available to the public when the Commission members receive the meeting materials, without objection.

#### **5. Meeting Rules and Bylaws**

This was on the agenda as a discussion item.

Chair Mitchell stated that at recent meetings the Commission discussed formalizing the meeting rules. Chair Mitchell said that Executive Director Nate Reitz had some ideas that could help if the Commission wanted to start forming meeting rules and bylaws. Chair Mitchell called on Senior Research Analysis Specialist Jill Payne to explain staff information paper entitled, "Meeting Rules and Bylaws." Ms. Payne explained that staff did look up the history of the Commission and did not find any formal rules of order or bylaws. Ms. Payne said that the Commission could decide to look at either the rules of order or the bylaws, or both.

Chair Mitchell asked how the Commission would like to proceed. In the ensuing discussion, Commission members suggested that Director Reitz draft meeting rules, with a possible option of additional bylaws if considered necessary by staff, and bring them back to the Commission at the next meeting.

#### **6. Request for Recommendation to the Legislature – Rep. Jamie Long**

This was on the agenda as a discussion item and possible action item.

Chair Mitchell stated that Rep. Jamie Long testified at the Commission's public hearing in December and submitted a letter to the Commission regarding House File 997 from the last session. Chair Mitchell explained that Rep. Long asked the Commission to collect probation data and produce reports. Chair Mitchell called on Ms. Payne who discussed the letter from Rep. Long

and the fiscal note for H.F. 997. Ms. Payne said that Rep. Long requested that the Commission consider making a recommendation to the Legislature that would instruct MSGC to collect and report on probation data and receive funding from the Legislature to do so. Ms. Payne explained the fiscal note that MSGC staff generated for H.F. 997 and explained the staff assumptions and budget estimates.

A discussion ensued.

**Motion** by Judge Mark and second by Commissioner Schnell to recommend to the Legislature that the Minnesota Sentencing Guidelines Commission be given the authority and resources to collect probation data.

**Motion carried.**

## **7. Potential Actions in Conformity with the Presumptive Probation Cap**

This was on the agenda as a discussion item and possible action item.

Ms. Payne presented staff issue paper entitled, “Potential Actions in Conformity with the Presumptive Cap on Length of Probation.” Ms. Payne explained that the paper related to the Commission’s presumptive probation cap of five years which was scheduled to go into effect August 1, 2020. Ms. Payne said that staff brings these issues forward now because (1) it wanted it to be known that it was possible to take action related to the presumptive probation cap; and (2) letting the Commission know now allowed time to make any necessary (conforming) changes to the Guidelines by August 1. Ms. Payne said that if there were any changes to the Guidelines or Commentary, staff suggested finalizing them by May 2020, so that they are moved to public hearing in July, before the effective date.

### **A. Recommendations to the Legislature**

Ms. Payne explained that this was on the agenda as a possible action item because it involved a recommendation to the Legislature. Ms. Payne gave examples of possible recommendations to the Legislature like an extension of probation for public-safety reasons, or fixing situations in statute where certain gross misdemeanors would permit longer probation periods than their felony counterparts. Ms. Payne asked if the Commission wished to make a recommendation to the Legislature or ask staff to draft a recommendation and bring it back before the Commission.

A discussion ensued.

**Motion** by Commissioner Schnell and second by Ms. Middlebrook to recommend that the Legislature adopt a change to the gross misdemeanor probation term in the manner of House File 689 with the DE1 amendment and the A3 amendment.

**Motion carried** with 6 votes in favor and 4 against.

## **B. Amendments to the Sentencing Guidelines**

Ms. Payne explained possible refining and clarifying amendments, as well as examples of corrective amendments, to the Guidelines.

In the ensuing discussion, some members questioned the Commission's authority to make changes to the modifications after submission to the Legislature.

Without objection, the Chair directed staff to seek advice from the Office of the Attorney General on the question of the authority of the Commission to make changes to the proposed modifications after submission to the Legislature prior to returning to the topic in March.

Chair Mitchell requested that Commission members let Director Reitz know if they think of related topics to bring to the Commission's attention.

## **C. Amendments to the Commentary**

Without objection, Chair Mitchell asked staff to draft conforming amendments to the commentary for the Commission's future consideration.

## **D. Changes to Sentencing Worksheets**

Chair Mitchell suggested deferring action on any necessary changes to sentencing worksheet, without objection.

## **8. Comprehensive Review of Child Pornography Sentencing**

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

### **A. Comparing Presumptive Sentences for Criminal Sexual Conduct & Child Pornography**

Chair Mitchell stated that Director Reitz will talk about this item at a future meeting.

## **B. Comparing Minnesota to Other Sentencing Guidelines Jurisdictions**

The Chair called on Research Analyst Nicole Jaspersen and Senior Research Analysis Specialist Anne Wall who presented staff information paper entitled, “Interstate Child Pornography Review.” Ms. Jaspersen explained how current policy information and data were requested from Washington, Kansas, Oregon, and North Carolina regarding each jurisdiction’s Child Pornography offenses. Ms. Jaspersen discussed the current statutory framework, case volume and distribution, and presumptive sentences for each state compared to Minnesota.

## **9. 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 her subcommittee for the age statute has not met again since the last Commission meeting. Ms. Payne stated that Director Reitz compared presumptive sentences for Criminal Sexual Conduct and Child Pornography and gave that presentation to the working group.

### **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 spent entirely on putting together the Report to the Legislature. Ms. Middlebrook stated a Commission member can contact her if they would like a copy of the report.

## **10. Executive Director’s Report**

This was on the agenda as an information item.

Chair Mitchell called on Ms. Payne who explained that the Legislature began on Tuesday, February 11, which was Minnesota Sentencing Guidelines Commission day in the House Public Safety and Criminal Justice Reform Finance and Policy Division, where Chair Mitchell and Director Reitz presented an overview of Sentencing Guidelines including some data and budget information. Ms. Payne stated that bills of interest were included in the meeting materials. Ms. Payne stated that the next MSGC meeting will be March 12 in the Lady Slipper conference room.

## **11. Public Input**

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

Chuck Turchick, of Minneapolis, thanked the Commission for agreeing to post the meeting materials in advance of the meetings and suggested that the Commission incorporate that decision in its meeting rules. Mr. Turchick discussed the possibility of ending incarceration in Minnesota, and questioned whether prisons are appropriate or ethical. He stated that public safety would increase and not decrease if incarceration were abolished.

Barbara Carson, a recently retired professor from Minnesota State University of Mankato where she taught corrections and probation, described her experiences working with CSTS data. Dr. Carson said that much of the information that would be useful for researchers is contained in the narrative notes, rather than in the more accessible data fields. Ms. Carson also suggested that besides looking at revocations, the Commission may look at the restructuring of probation, which generally includes more sanctions or incentives for the clients, in order for staff to study the effectiveness of probation too.

## **12. Adjournment**

The meeting adjourned at 3:12 p.m., without objection.