

Approved Meeting Minutes

June 11, 2020

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 11, 2020. Due to a time conflict with the Minneapolis memorial service for George Floyd, the Chair postponed the June 4 Commission meeting until June 11. 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 May 22, 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, Cathryn Middlebrook, Peter Orput, and Commissioner of Corrections Paul Schnell. Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically included Robin Goldman, MA, LP, Minnesota DOC SOTP Director; Elizabeth Griffin, MA, LMFT, Internet Behavior Consulting, LCC; Jeff Simard; Lindsey Nixon; Robert Small, Minn. County Attorneys Association; and Matt Majovski, Dakota County Community Corrections.

1. Call to Order & Roll Call Chair Mitchell called the meeting to order at 1:04 p.m.

Chair Mitchell explained that the meeting was being held by telephone and internet today which is authorized by Minn. Stat. § 13D.021 which applies because an in-person meeting is not practical or prudent due to the health pandemic and peace time emergency. Chair Mitchell explained that these conditions make it unfeasible for any member of the Commission or the public to attend at the regular meeting location in Saint Paul which is currently open only to authorized state employees. Chair Mitchell stated that for the reasons stated the meeting is conducted entirely by telephone or internet and the notice was posted on the MSGC website since May 22, 2020. Chair Mitchell stated that members of the public are able to monitor the meeting remotely by telephone or computer with instructions posted on the MSGC website.

Chair Mitchell asked Director Reitz to call the roll.

Present electronically were Commission Chair Kelly Lyn Mitchell, Justice (Ret.) Christopher Dietzen, Valerie Estrada, Abby Honold, Tonja Honsey, Judge Michelle Larkin, Cathryn Middlebrook, Peter

Orput, and Commissioner of Corrections Paul Schnell. Members absent were Judge Kevin Mark and Sergeant Salim Omari. Nine members were present; two members were absent and excused. A quorum was present.

2. Approval of Agenda

This was on the agenda as an action item.

Motion by Ms. Middlebrook and second by Judge Larkin to approve the agenda, amended as follows: to add a discussion of recent events as item 5 and to renumber current items 5 through 11 as items 6 through 12.

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

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Mr. Orput, and Commissioner Schnell.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Ms. Estrada to approve the meeting minutes from May 7, 2020.

Motion carried on a 8–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Mr. Orput, and Commissioner Schnell. Justice Dietzen abstained.

4. Child Pornography Offender Treatment – Expert Testimony

This was on the agenda as an information item.

Director Reitz welcomed Licensed Psychologist and Minnesota DOC Sex Offender Treatment Program Director, Robin Goldman and Licensed Marriage and Family Therapist and Licensed Professional and Clinical Counselor, Elizabeth Griffin. Ms. Goldman stated that as a licensed psychologist she has expertise treating sex offenders. Ms. Griffin stated that she has a broad range of experience and has an expertise treating child pornography offenders. Ms. Goldman and Ms. Griffin made a presentation entitled, “Child Pornography Offenders...Providing Context.” Ms. Goldman explained that there is a range of risk for child pornography offenders. Ms. Griffin discussed the historical context behind child pornography offenders comparing cases from 1990 versus 2020. Ms. Griffin explained that currently the cases have become complicated and in many

of the cases, the individual is not pedophilic. Ms. Griffin explained the psychology of technology and the influence that technology has on individuals, why people view child pornography, child pornography offenders and contact sexual offending, and protective factors. Ms. Goldman discussed risk, need, responsivity, various treatment needs and methods, impact of public safety, and a research study that was completed comparing sex offenders who entered prison-based treatment with those who did not.

A summary of the research study was presented where participation in prison-based sex offender treatment significantly reduced risk of recidivism by 27% for sexual recidivism, 18% for violent recidivism, and 12% for general recidivism. Treatment outcomes were presented where completing treatment or successfully participating until release significantly reduced all three types of recidivism: 33% for sexual recidivism, 23% for violent recidivism, and 15% for general recidivism.¹ Commission asked questions and Chair Mitchell thanked Ms. Goldman and Ms. Griffin for their presentation.

5. Recent Events

Chair Mitchell presented remarks regarding the recent death of George Floyd and the frank discussions about racial disparity that have ensued. She called upon the Commission to undertake a systematic review of its policies for racial impact. Following her remarks, a written version of which was included in the meeting materials, Chair Mitchell asked members for their input. A discussion ensued among Commission members, in which support for the Chair's remarks were expressed.

Motion by Commissioner Schnell and second by Ms. Honsey to study the Commission's policies for racial impact over the next year.

Further discussion ensued.

Reminding the Commission of its recent policy on demographic impact statements—which included demographic considerations other than race—Justice Dietzen asked the makers of the motion and its second to broaden the motion to include a consideration of other factors bearing on neutrality and uniformity, to include factors such as gender, employment status, etc., but with race as the primary focus.

Commissioner Schnell and Ms. Honsey accepted the suggestion as a friendly **amendment**. The Chair restated the amended motion as a motion to review the Guidelines for conformity with the Commission's policy of neutrality, with an emphasis on impact by race.

¹ Duwe, Grant and Robin Goldman. "The impact of prison-based treatment on sex offender recidivism: evidence from Minnesota." (2010). Retrived on June 15, 2020 at https://mn.gov/doc/assets/03-10SOTXStudy_Revised_tcm1089-271635.pdf.

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

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Mr. Orput, and Commissioner Schnell.

6. Review of 2020 Regular Session Laws

A. Amendments to Crime Laws Affecting the Guidelines

This was on the agenda as an action item.

Director Reitz presented the paper entitled, “2020 Regular Session Laws, Amendments to Crime Laws Affecting the Guidelines.” Director Reitz explained that amendments were made to Minn. Stat. § 609.749 (Harassment and Stalking). Staff recommended no modifications because no changes were made to the statutory maximums and no new felonies were created as a result of the amendments. Chair Mitchell asked members if they wished to take action on the amended crime law. There being no affirmative response, Chair Mitchell asked Director Reitz to move to the next amended crime law.

Director Reitz explained that technical amendments were made to Minn. Stat. § 169A.24, subd. 1, that affect Appendix 1 of the Guidelines. Staff recommended making modifications due to this technical amendment.

Motion by Justice Dietzen and second by Mr. Orput to make conforming modifications to 2019 Minn. Sentencing Guidelines “Prerequisite or Conditions” for this entry in Appendix 1 by inserting the missing paragraph (a) as follows.

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

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Mr. Orput, and Commissioner Schnell.

Proposed modifications to 2019 Minn. Sentencing Guidelines Appendix 1:

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.

* * *

| Statute | Offense | Prerequisite or Conditions | Minimum Duration |
|---------------------|---------------------------|---|-------------------------|
| 169A.24, subd. 1(3) | Driving while Intoxicated | Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(a)(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(a)(2) thru (6); § 609.2114.2(2) thru (6) | Grid Time |

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B. Amendments to Crime Laws Not Directly Affecting the Guidelines

This was on the agenda as an information item.

Director Reitz presented the amendments to crime laws not directly affecting the guidelines. Director Reitz told the Commission he could answer any questions they might have, but in staff's estimation the amended crime laws do not affect the guidelines.

C. Decision on Public Hearing

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz to explain the public hearing process. Director Reitz discussed staff issue paper entitled, "Decision on Public Hearing." Director Reitz discussed the changes being contemplated, public hearing logistical issues, the need for a public hearing, and if a remote public hearing is possible. The Commission discussed whether to hold a public hearing.

Motion by Justice Dietzen and second by Ms. Middlebrook to hold a public hearing remotely on July 16, 2020.

Research Analysis Specialist Anne Wall recommended adding that the Commission agreed to take no action for the amended crime law for Minn. Stat. § 609.749 (Harassment and Stalking) to the public hearing amendments. Without objection, the Commission agreed.

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

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Estrada, Ms. Honold, Ms. Honsey, Judge Larkin, Ms. Middlebrook, Mr. Orput, and Commissioner Schnell.

7. Comprehensive Review of Child Pornography Sentencing

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

A. Aggravated Departures

Director Reitz presented staff information paper entitled, “Aggravated Departures– Possession & Dissemination of Child Pornography, Use of Minor in Sexual Performance” which showed no aggravated departures.

B. How Courts Ranked Child Pornography When Unranked

Director Reitz and Senior Research Analysis Specialist Anne Wall presented the 2008 MSGC staff report entitled, “Possession & Dissemination of Child Pornography.” Director Reitz explained that possession and dissemination of pornographic works involving minors were unranked offenses through August 1, 2006.

C. Other Issues

Director Reitz presented staff presentation entitled, “Child Pornography Sentencing: Comprehensive Review Part, Part Six.” Director Reitz discussed other issues, including history of criminal sexually dangerous behavior (CSDB), if CSDB history is captured in the Guidelines currently, how predatory offender registration works, grooming, invasion of privacy, and victim’s rights.

D. Next Steps

Chair Mitchell asked the Commission to look at staff information paper entitled, “Summary of Staff Issues Raised During Review of Child Pornography Sentencing.” Chair Mitchell asked the Commission members to review the list and put together their lists of what they think the Commission should work on. Chair asked Commission members to send their short list to Director Reitz by July 7, 2020, so the Commission can begin its discussion at the July meeting of what it is going to work on.

8. Exercise of Early Release Authority During Pandemic – Dep’t of Corrections

This was on the agenda as an information item.

Commissioner of Corrections Paul Schnell presented “MN Department of Corrections COVID-19 Releases.” Commissioner Schnell discussed COVID-19 in DOC facilities, testing for COVID-19, DOC releases, and COVID-19 release programs, including Early Work Release and Conditional Medical Release. Commissioner Schnell explained the conditional medical release process and the current lawsuit that is pending.

9. Working Group/Task Force Reports

Without objection, Chair Mitchell moved this item to the next month’s agenda.

10. Executive Director’s Report

Without objection, Chair Mitchell moved this item to the next month’s agenda.

11. Public Input

Chair Mitchell asked if any member of the public present wished to speak.

Matt Majovski, Dakota County Community Corrections, asked a question about the interplay between the mandatory minimums established for offenses listed in Minn. Stat. § 609.11, subd. 9, and the 2020 changes in the elements of harassment with a dangerous weapon (Minn. Stat. § 609.749, subd. 3(a)(3)). Director Reitz answered Mr. Majovski’s question.

Chair Mitchell thanked Mr. Majovski for his comment.

12. Adjournment

Chair Mitchell asked Director Reitz to remind the Commission members of the upcoming public hearing date and other dates in July. Director Reitz stated that July 7, 2020 is the deadline for Commission members to submit their comments regarding issues to be covered in the Fall concerning child pornography. The public hearing date is July 16, 2020 and a quorum is not essential. Director Reitz stated that the next Commission meeting is July 23, 2020 and a quorum is necessary.

The meeting adjourned at 3:46 p.m., without objection.