

## Approved Meeting Minutes

**March 12, 2020**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on March 12, 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, Valerie Estrada, Abby Honold, Judge Michelle Larkin, Cathryn Middlebrook, Sergeant Salim Omari, Peter Orput, and Commissioner of Corrections Paul Schnell. Also present were Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland (telephonically), Jill Payne, and Anne Wall.

Members of the public present included Robert Small, Minn. County Attorneys Association; Chuck Turchick; and William Ward, Minn. State Public Defender.

### 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 Sergeant Omari to approve the agenda, amended as follows: to add “Dietzen Motion for Recommendation to Legislature (Action)” as item 4; to move current item 4 (“Comprehensive Review of Child Pornography Sentencing”) to become item 7; and to renumber current items 7 through 11 as items 8 through 12.

**Motion carried.**

### 3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

**Motion** by Commissioner Schnell and second by Judge Larkin to approve the meeting minutes from February 13, 2020.

**Motion carried.**

#### **4. Dietzen Motion for Recommendation to Legislature (Action)**

**Motion** by Justice Dietzen and second by Sergeant Omari to recommend that the Legislature direct the Commission to study, adopt, and forward to the Legislature a probation-term grid.

Justice Dietzen introduced the memorandum entitled, "Recommendation for Legislative Consideration of Probation-Term Grid." Justice Dietzen explained that the memorandum listed three reasons to urge the Commission, pursuant to Minn. Stat. § 244.09, subd. 6, to recommend that the Legislature direct the Commission to develop a probation-term grid as an alternative to the proposal submitted to the Legislature in January and he explained those three reasons.

A discussion ensued.

**Motion failed** with 4 votes in favor and 5 votes opposed.

#### **5. Attorney General Legal Opinion Related to Amendments to the Sentencing Guidelines**

Chair Mitchell called on Director Reitz who explained his February 20, 2020, request for a legal opinion from the Attorney General's Office regarding what extent the Commission may make changes to the Sentencing Guidelines that amend or clarify modifications already submitted to the Legislature in January, to take effect simultaneously with those modifications.

##### **A. Decision on Waiver of Attorney-Client Privilege**

This was on the agenda as a possible action item.

**Motion** by Justice Dietzen and second by Mr. Orput to waive attorney-client privilege with respect to the Deputy Attorney General's legal opinion dated February 28, 2020.

**Motion carried.**

##### **B. Opinion Review**

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz, who briefly reviewed the legal opinion. The Commission agreed to ask Minnesota Sentencing Guidelines Commission staff to write a draft of the commentary for the next Commission meeting regarding the comments in the Attorney General's legal opinion dated February 28, 2020.

A member inquired about a reference to past communications with the Attorney General's office in September, 2019. Director Reitz said he would look for that communication, and

asked the Commission if they would be willing to waive attorney-client privilege with respect to it so it could be treated like regular meeting materials.

**Motion** by Commissioner Schnell and second by Justice Dietzen for the Commission to waive attorney-client privilege with respect to the previous communication with the Attorney General's office.

**Motion carried.**

## **6. Potential Amendments to the Commentary**

This was on the agenda as a discussion 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." In light of the Commission's proposed changes to the Sentencing Guidelines establishing a presumptive cap of five years' probation for all felonies except listed sex and homicide offenses, Director Reitz suggested three types of potential amendments to the commentary in section 3.A for the Commission's consideration. Director Reitz explained staff suggestions to reorganize and renumber the comments, update the language in the renumbered section 3.A.201 to reflect the new probation-length guidelines, and qualify language in the commentary indicating that the Commission has chosen not to develop nonimprisonment guidelines.

A discussion ensued, wherein members discussed possible amendments to the commentary and suggested some changes. Director Reitz stated that if any members have any suggested language, they may email him (but do not copy other members in order to avoid open-meeting law violations).

The Chair next moved to item 8, without objection.

## **8. Meeting Rules and Bylaws**

This was on the agenda as a possible action item.

Chair Mitchell called on Director Reitz who discussed staff paper entitled, "Meeting Rules (Standalone; Sample/Staff Draft)." A discussion ensued and the members directed Director Reitz to edit and refine the language and bring it back before them at the next meeting.

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

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

**Motion** by Sergeant Omari and second by Ms. Estrada to move this item to the April 9, 2020, agenda.

**Motion carried** unanimously.

## **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 Director Reitz to give an update about the Criminal Sexual Conduct Statutory Reform Working Group. Director Reitz said that he is on the professional occupational relationships committee. Director Reitz explained how there is a vulnerable adult abuse statute that talks about having sexual relations with a vulnerable adult and there is a thought of moving that into the criminal sexual conduct statutes as a sex offense.

### **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 in the last meeting there was a presentation by the County Attorneys Association on a proposed bill that would replace rule 20.01 from the rules of criminal procedure. Ms. Middlebrook explained that they also discussed education issues and looking at trainings and education trainings for stakeholders. Ms. Middlebrook stated that they also discussed if there was going to be community competency restoration programs, what would that look like, who would participate, and how would individuals get there. Ms. Middlebrook stated that Blue Earth County's yellow-line project was viewed as a good model standard.

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

This was on the agenda as an information item.

Director Reitz explained that he sent the memorandums entitled, "Recommendation to Give MSGC Probation-Data Collection Authority and Resources" and "Recommendation to Limit Some Gross Misdemeanor Probation Lengths to Five Years" to the leadership of the House and Senate crime committees. Director Reitz explained he would testify on behalf of the members regarding Senate File 3649 to promote defining the minimum term of imprisonment for murder of an unborn child in the first degree, as the Commission recommended. Director Reitz explained the status of a number of bills pertinent to the Commission or its work. Director Reitz reported that the Governor's supplemental budget request, announced that morning, would provide necessary funding for

continued MSGC operations. Director Reitz explained that staff will make arrangements for telephonic participation in the next meeting, April 9, 2020, assuming the meeting is not canceled due to the current Coronavirus pandemic.

Chair Mitchell explained that the agency is monitoring the situation and asked all members to be ready for possible changes regarding the structure of future meetings due to health and safety concerns.

## **11. Public Input**

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

Chuck Turchick, of Minneapolis, told the Commission that he thinks it was in Robert's preface to his 4th edition that if these rules are not facilitating the decision-making process then throw them out. Mr. Turchick stated that staff is absolutely terrific, and he stated that the presentations by staff are clear, objective, and presented from a neutral standpoint. Mr. Turchick thanked staff for their efficiency in responding to his e-mail earlier in the day.

## **12. Adjournment**

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