

## Approved Meeting Minutes

**September 10, 2020**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on September 10, 2020. Due to the ongoing health pandemic and peacetime emergency, 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 September 3, 2020.

Present electronically were Commission Chair Kelly Lyn Mitchell and Commission members Justice (Ret.) Christopher Dietzen, Abby Honold, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commissioner of Corrections Paul Schnell. Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Nicole Jasperson, Kathleen Madland, Linda McBrayer, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically included Cindy Weme; Paulette Orlicki; Max Page; Trista Swanson; Robert Small, Minn. County Attorneys Association; John Hultquist; Mary Moriarty; and Ben Johnson, Minn. House of Representatives Research.

**1. Call to Order & Roll Call** Chair Mitchell called the meeting to order at 1:05 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 peacetime 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 September 3, 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, Abby Honold, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commissioner of Corrections Paul Schnell. Seven members were present; three members were absent. A quorum was present.

## 2. Approval of Agenda

This was on the agenda as an action item.

**Motion** by Judge Larkin and second by Ms. Middlebrook to approve the meeting agenda.

**Motion carried** on a 7–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Honold, Judge Larkin, Judge Mark, Ms. Middlebrook, and Commissioner Schnell.

## 3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Director Reitz noted that a member of the public pointed out a spelling error in paragraph 3 of the Executive Director’s Report where “...Sentencing Suidelines” should be changed to “...Sentencing Guidelines.”

**Motion** by Justice Dietzen and second by Judge Mark to approve the meeting minutes from July 23, 2020, as corrected.

**Motion carried** on a 7–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Justice Dietzen, Ms. Honold, Judge Larkin, Judge Mark, Ms. Middlebrook, and Commissioner Schnell.

## 4. Child Pornography Review – Offense Ranking

This was on the agenda as a discussion item.

Judge Larkin asked about the status of Commissioner Orput’s replacement. Director Reitz stated that there was no confirmed county attorney representative yet because the governor has not appointed a successor. Director Reitz stated that the Minnesota County Attorney Association recommended Wadena County Attorney Kyra Ladd.

Chair Mitchell presented her presentation entitled, “Child Pornography Ranking Discussion.” Chair Mitchell discussed the ranking considerations used in the past by the Commission including discussing the gravity of the offense and the blameworthiness of the individual. Chair Mitchell explained the indicators used for ranking offenses and the process. A member stated that public safety should be the primary consideration for ranking child pornography offenses.

Chair Mitchell stated that her goal was to move to the proposal stage in October. Chair Mitchell led the Commission in a discussion about the elements of Minnesota’s child pornography offenses, the statutory maximums, and the types of harm caused by the offenses. Chair Mitchell discussed typical possession cases.

A member raised concerns about the staff methodology in calculating child pornography recidivism rates, including staff’s narrow definition of recidivism as a new Minnesota felony sentence during three years at risk. MSGC staff explained that they were trying to emulate the methodology of the Robina Institute’s 2018 Minnesota Criminal History Score Recidivism Project study so the results would be comparable. Staff offered to attempt to expand its child pornography recidivism study data to include 2019 data as well. Federal research into child pornography recidivism, using a different offender population and different recidivism criteria, was also discussed.

During the recidivism discussion, technical difficulties caused several members simultaneously to lose electronic connection for about four minutes. The meeting paused. The connection was restored at about 1:39 p.m., at which time Chair Mitchell asked Director Reitz to take the roll to confirm that everyone was back in the meeting. Present electronically were Commission Chair Kelly Lyn Mitchell, Justice (Ret.) Christopher Dietzen, Abby Honold, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commissioner of Corrections Paul Schnell. Seven members remained present and three members remained absent. A quorum remained present.

Chair Mitchell next led the discussion into typical dissemination and production cases. Chair Mitchell requested that staff include a description of typical production cases in the draft report on the Commission’s review of child pornography sentencing guidelines. Chair Mitchell described some of the behavior involved in the typical production cases. Commission members had questions about federal prosecution of child pornography cases, and some expressed an interest in obtaining federal data on such cases. Chair Mitchell also led a discussion of atypical cases, including sexting.

Chair Mitchell compared Minnesota’s child pornography offense rankings to other Minnesota offenses, and compared Minnesota’s punishment of child pornography offenses to sentencing in other states.

Chair Mitchell next led members in an extended discussion of the relative severity of possession, dissemination, and production, as well as a discussion about any caveats, concerns, or other consideration that the Commission should think more about in assessing the relative severity of these offenses. The Chair documented the opinions expressed during the discussion in her presentation, which was posted in the “Meetings” section of the Commission’s web site after the meeting.

Chair Mitchell next led members in an extended discussion about how the statutory sentencing enhancement fit into the relative severity of offenses, in light of known data about the offenses, statutory maximums, and all the information before the Commission. The Chair documented the opinions expressed during the discussion in her presentation.

The Commission next discussed the timeline for members to advance specific ranking proposals. Chair Mitchell stated that, to have an August 1, 2021, effective date, the Commission needs to see proposals in October, and to see them again in November, prior to advancing a proposal to a December public hearing. Chair Mitchell stated that if the Commission's review concludes that ranking changes are not necessary, a public hearing would not be needed. Director Reitz reminded the Commission that the Legislature tasked it with comprehensively reviewing, and considering modifications to, how the Sentencing Guidelines address child pornography crimes. Director Reitz asked members to submit to him any proposals they would like to review at the October 8 meeting by September 30, 2020.

## **5. Report of Child Pornography Review – September Draft**

This was on the agenda as a discussion item.

Without objection, Chair Mitchell deferred further review of the September staff draft of the "Report on Comprehensive Review of Child Pornography Sentencing Guidelines," and asked members to send additional feedback to Director Reitz.

Director Reitz reflected on feedback advanced in the meeting thus far. In addition, a member requested that the dates of the testimonies be added on page 15 of the report, and that the opening clause of footnote 49 be elevated to the text of the report.

Chair Mitchell welcomed the feedback and thanked staff for the report.

## **6. Partial Points in Criminal History Scores**

This was on the agenda as a discussion item.

Director Reitz presented staff issue paper entitled, "Partial Points in Criminal History Scores." Director Reitz explained the question of whether it is possible, after the 2019 amendments to the Sentencing Guidelines, for a criminal history score to contain a partial point; and, if so, whether this presents a problem that the Commission wishes to resolve. Director Reitz discussed the guidelines considerations, estimate of impact, questions for the Commission, and staff recommendations.

A discussion ensued, in which staff answered Commission members' questions.

Members spoke in favor of moving forward with what was described as “Phase 2” in the staff issue paper, in which staff recommends eliminating the felony-point rounding rule and replacing it with a new rounding rule that applies to the unrounded sum of all four criminal history factors. Director Reitz stated that he would bring forward such a proposal at next month’s meeting.

#### **7. Sentencing Guidelines Neutrality Review – Revocation Data**

Without objection, Chair Mitchell skipped this item on the agenda.

#### **8. Working Group/Task Force Reports**

Without objection, Chair Mitchell skipped this item on the agenda.

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

Director Reitz reported on the agency budget situation, stating that he recently testified before the House Public Safety and Criminal Justice Reform Finance and Policy Division Committee. Director Reitz stated that a proposal had been advanced in that committee to include MSGC’s deficiency as part of a supplemental appropriation bill that would include the Department of Corrections and the Department of Public Safety.

#### **10. Public Input**

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

Paulette Orlicki, who works for Hennepin County in a public health position and mother of two. Ms. Orlicki stated that she appreciated the opportunity to speak to the Sentencing Guidelines Commission. Ms. Orlicki stated that she sadly has just one daughter who is alive after a drunk driving crash killed her older daughter in February 2018. Ms. Orlicki explained that, as a highly concerned and affected citizen, she will be speaking about the subject of drunk driving sentencing guidelines. Ms. Orlicki stated that her daughter was a 911 dispatcher killed on her way to work on February 17, 2018. Ms. Orlicki stated that the drunk driver survived and that her daughter was killed instantly. Ms. Orlicki explained that the offender was sentenced to 4 years in prison and to serve 2½ years’ prison after having served 1 year and 3 months in the Hennepin County. Ms. Orlicki stated that her daughter’s life was taken from them and that there will be a lifetime of grief and heartache. Ms. Orlicki stated that 2½ years in prison is not justice for the crime.

Ms. Orlicki asked for increased sentencing guidelines penalties for a first-time drunk driver who kills or severely injures citizens. Ms. Orlicki stated that, due to a lack of consequences, people drive drunk daily and citizens are at the mercy of the drunk drivers. Ms. Orlicki explained that the Minnesota statute penalty for a criminal vehicular homicide includes for a first-time offender to be

sentenced up to 10 years or up to 20,000 fine and if there is a prior offense then 10 years can be enhanced to 15 years. Ms. Orlicki stated that the Legislature created an adequate penalty, but sentence guidelines do not account for the statutory maximum. Ms. Orlicki stated that this change is needed so people think before driving impaired. Ms. Orlicki explained that 1,000 people are picked up for DWIs daily and Minnesota's sentencing is extremely less harsh than other states.

Chair Mitchell thanked Ms. Orlicki for her comments.

Trista Swanson stated that she lost her mother-in-law and 13-year-old son to a first-time drunk driver at 7:30 in the morning when they were on their way to school. Ms. Swanson stated that the offender did serve a Guidelines consecutive sentence and was released from prison after 5 years. Ms. Swanson stated that the offender was charged with a second DWI offense a year after the offender was off probation. Ms. Swanson explained that after the offender killed two people and did his time, which was not enough, he offended again and luckily this time did not kill anyone. Ms. Swanson stated that there needs to be stronger guidelines for people so they think about what they are doing before they get into a car. Ms. Swanson stated that individuals who lose loved ones because of drunk drivers serve a lifetime sentence and criminal vehicular operation/homicide offenders only spend a few years in prison and live life normally when they are released.

Chair Mitchell thanked Ms. Swanson for her comments.

## **11. Adjournment**

Judge Larkin asked when the Commission last reviewed ranking of criminal vehicular homicide. Director Reitz stated that it was before 2014 (when he became Director). Judge Larkin asked that the Commission look at the rankings. Director Reitz said that staff would gather the necessary information and report back at the next meeting.

Chair Mitchell reminded the Commission that proposals were to be sent to Director Reitz by September 30, 2020.

The meeting adjourned at 3:35 p.m., without objection.