

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**December 30, 2016**

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 30, 2016, in Room 1200 of the Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Commission Vice-Chair Judge Heidi Schellhas, and Commission members Valerie Estrada, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, Commissioner of Corrections Tom Roy and Yamy Vang. Angela Champagne-From and Senior Judge Mark Wernick participated telephonically, the notice required in Minn. Stat. § [13D.015](#), subd. 5, having been posted on the MSGC website on December 16, 2016.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Brian E. Oliver, Jill Payne and Anne Wall. Assistant Attorney General Jim Early was also present.

Members of the public present included Lars Negstad, Anita Alexander, and Nancy Eder, ISALAH MN; Tom Marver and Jim Rubenstein, Jewish Community Action (JCA); Amity Foster, Gil Gurhofer, Take Action MN; Josh Esmay, Legal Rights Center; Robert Small, Executive Director of the Minn. County Attorneys Association; William Ward, State Public Defender for Minnesota.

**1. Call to Order**

The Chair called the meeting to order at 10:00 a.m.

**2. Approval of Agenda**

This was on the agenda as an action item.

**Motion** by Judge Lennon and second by Vice-Chair Schellhas to approve the meeting agenda.

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

Voting “Yes” were Ms. Champagne-From, Sgt. Ford, Judge Lennon, Ms. Middlebrook, Mr. Orput, Commissioner Roy, Vice-Chair Schellhas, Ms. Vang, Judge Wernick, and Chair Dietzen.

**3. Approval of Meeting Minutes**

This was on the agenda as an action item.

**Motion** by Sgt. Ford and second by Mr. Orput to approve the meeting minutes from November 17, 2016.

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

Voting “Yes” were Ms. Champagne-From, Sgt. Ford, Judge Lennon, Ms. Middlebrook, Mr. Orput, Commissioner Roy, Vice-Chair Schellhas, Ms. Vang, and Chair Dietzen.

Judge Wernick abstained.

#### **4. Review of Public Hearing Record, Including Written Materials Submitted**

Chair Dietzen called on the Executive Director to detail how the Commission complied with the public hearing requirements. Executive Director Reitz supplied the following information to the Commission:

The notice of public hearing was published in the State Register, emailed to interested persons, and the contents of the proposed modifications were posted on the Commission’s website on November 21, 2016. The public hearing was held on December 21, 2016, in Room 1100; Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. The public hearing was attended by a number of members of the public, who appeared to fill up well over half of the 190-person-capacity hearing room. Twenty-five speakers proved public comment to the members of the Commission present.

After the public hearing, the public hearing record remained open through the end of the business day, December 27, 2016—and the Commission received a total of 40 written comments, including some comments from speakers at the public hearing. The complete public hearing record, to include a link to the audio of the hearing on the Senate web site, was emailed to the entire Commission on the morning of December 28, 2016. All documents within the public hearing record were included in the Commission’s packets.

**Motion** by Vice-Chair Schellhas and second by Mr. Orput to affirm that the Commission complied with its administrative rules and Minnesota Statutes.

**Motion carried** on an 11–0 roll-call vote.

Voting “Yes” were Ms. Champagne-From, Ms. Estrada, Sgt. Ford, Judge Lennon, Ms. Middlebrook, Mr. Orput, Commissioner Roy, Vice-Chair Schellhas, Ms. Vang, Judge Wernick, and Chair Dietzen.

## 5. Accept or Reject Proposed Modifications to the Sentencing Guidelines and Commentary

This was on the agenda as an action item.

### A. Prior Controlled Substance Offenses in Criminal History

Chair Dietzen called for a motion.

**Motion** by Judge Wernick and second by Ms. Middlebrook to adopt the proposal to modify the Minnesota Sentencing Guidelines by adding § 2.B.7.c, and to add Comment 2.B.704, as follows.

#### 7. Determining Offense Levels for Prior Offenses.

a. Classification of Prior Offense. The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions (see Minn. Stat. § 609.02, subds. 2-4a) and sentencing policies. Offenses that are petty misdemeanors by statute, or that are certified as or deemed to be petty misdemeanors under Minn. R. Crim. P. 23, must not be used to compute the criminal history score.

b. Monetary Threshold. When a monetary threshold determines the offense classification, the monetary threshold in effect when the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history score.

c. Drug Threshold. When an offender's criminal history contains a Minnesota felony conviction for controlled substance crime in the first, second, third, or fifth degree with an offense date prior to August 1, 2016, the current felony offense of the same name determines the offense classification in calculating the criminal history score, notwithstanding the redefinition of the offense, unless the court finds, by a preponderance of evidence, that the facts underlying the prior conviction would have constituted a controlled substance crime of a lesser degree, or a gross misdemeanor controlled substance crime, if the offense had been committed on or after August 1, 2016. If the court makes such a finding, then the controlled substance crime of the lesser degree, or the gross

misdemeanor controlled substance crime, determines the offense classification in calculating the criminal history score.

\* \* \*

**2.B.704.** On August 1, 2016, drug-quantity thresholds changed for various degrees of controlled substance crime, and a gross misdemeanor version of Fifth-Degree Controlled Substance Crime was created. Despite these elemental changes and the creation of the Drug Offender Grid, the essential severity of the various degrees of controlled substance crime remained unaltered by the Legislature and the Commission. The Commission decided that prior Minnesota felony drug offenses committed before August 1, 2016, should receive the same weight as offenses of the same degree committed on or after that date. On the other hand, the Commission decided that it was appropriate to permit a reduced weight when it could be proven that the facts underlying the prior offense comported with an offense that the Legislature now considered to be less serious. To illustrate, assume an offender was convicted in 2015 of Fifth-Degree Controlled Substance Crime for possessing a residual amount of methamphetamine weighing less than 0.25 grams, and that the offender had not been previously convicted of a chapter 152 offense (or similar crime from another jurisdiction). Because the prior offense was a felony Fifth-Degree Controlled Substance Crime, it will be eligible to contribute ½ felony point to the offender's criminal history score, unless it is proven by a preponderance of evidence that, under current offense definitions, the prior offense meets the definition of gross misdemeanor Fifth-Degree Controlled Substance Crime. In the latter case, the prior offense will be eligible to contribute one gross misdemeanor unit to the offender's criminal history score.

A lengthy discussion ensued in which the Commission discussed a memorandum from Judge Wernick to the Commission dated December 20, 2016; and a memorandum from Chair Dietzen to the Commission dated December 28, 2016.

**Motion** by Vice-Chair Schellhas and second by Ms. Vang to table the pending motion. Two-thirds of the membership did not concur in the motion to table; therefore the motion **failed** on a 3-8 roll-call vote.

Voting "Yes" were Vice-Chair Schellhas, Ms. Vang, and Chair Dietzen.

Voting "No" were Ms. Champagne-From, Ms. Estrada, Sgt. Ford, Judge Lennon, Ms. Middlebrook, Mr. Orput, Commissioner Roy, and Judge Wernick.

Discussion continued on the previous motion to amend the Minnesota Sentencing Guidelines by adding § 2.B.7.c, and to add Comment 2.B.704.

**Motion failed** on a 5–6 roll-call vote.

Voting “Yes” were Ms. Estrada, Judge Lennon, Ms. Middlebrook, Commissioner Roy, and Judge Wernick.

Voting “No” were Ms. Champagne-From, Sgt. Ford, Mr. Orput, Vice-Chair Schellhas, Ms. Vang, and Chair Dietzen.

Chair Dietzen called for a motion to include in the Commission’s 2017 Report to the Legislature the reasons why the above motion to modify the Guidelines was rejected by the Commission.

**Motion** by Vice-Chair Schellhas and second by Ms. Vang to include in the Commission’s 2017 Report to the Legislature the two documents and one oral statement that members of the majority found persuasive: 1) a memorandum from Chair Dietzen to the Commission dated December 28, 2016; 2) an oral statement made by Vice-Chair Schellhas at the meeting on December 30, 2016; and 3) a letter from the Dakota County Attorney and the Ramsey County Attorney dated December 23, 2016.

**Motion carried** on a 6–5 roll-call vote.

Voting “Yes” were Ms. Champagne-From, Sgt. Ford, Mr. Orput, Vice-Chair Schellhas, Ms. Vang, and Chair Dietzen.

Voting “No” were Ms. Estrada, Judge Lennon, Ms. Middlebrook, Commissioner Roy, and Judge Wernick.

At their request, the telephone conference call with Ms. Champagne-From and Judge Wernick was ended. There were no other Commission members nor members of the public participating by electronic means. Roll-call voting ended; there were no objections.

## **B. Re-Ranking Severity Level of Child Neglect and Endangerment**

Chair Dietzen called for a motion.

**Motion** by Judge Lennon and second by Sgt. Ford to adopt the proposal to re-rank child neglect and endangerment under Minn. Stat. § 609.378, at Severity

Level 5, by modifying Minnesota Sentencing Guidelines, § 5.A and 5.B, as follows.

**5.A. Offense Severity Reference Table**

\* \* \*

Severity Level	Offense Title	Statute Number
<u>5</u>	Child Neglect/Endangerment	609.378
<del>1</del>	Child Neglect/Endangerment	609.378

\* \* \*

**5.B. Severity Level by Statutory Citation**

\* \* \*

Statute Number	Offense Title	Severity Level
609.378	Child Neglect/Endangerment	<u>5</u> <del>1</del>

\* \* \*

**Motion carried** unanimously.

**C. Modifying the Permissive Consecutive Sentencing List**

Chair Dietzen called for a motion.

**Motion** by Vice-Chair Schellhas and second by Ms. Vang to adopt the proposal to add interfering with a body or scene of death under Minn. Stat. § 609.502, subd. 1, to the list of offenses eligible for permissive consecutive sentencing in the Minnesota Sentencing Guidelines, § 6, 2017, as follows.

**6. Offenses Eligible for Permissive Consecutive Sentences**

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

- B.** Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

\* \* \*

<b>Statute Number</b>	<b>Offense Title</b>
609.502, subd. 1	Interfering with a Body or Scene of Death

\* \* \*

**Motion carried** unanimously.

#### **D. Effective Date(s) of Adopted Modification(s)**

Chair Dietzen said that the effective dates must be determined and he called for a motion.

**Motion** by Commissioner Roy and second by Sgt. Ford to set the effective date for the adopted proposals as August 1, 2017, following legislative review.

**Motion carried** unanimously.

#### **6. Review and Approve 2017 Report to the Legislature**

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz to present a draft of the 2017 Report to the Legislature. The Commission discussed the draft report sent to members by email on 12/29/2016. Executive Director Reitz explained that MSGC staff was delayed in getting the draft to members because it was waiting for the release of the Bureau of Justice Statistics (BJS) report on 2015 imprisonment rates that was referenced in the report.

The Commission discussed the report. Chair Dietzen asked Commission members to get substantive changes to Executive Director Reitz by Monday, January 9, 2017, for inclusion in the final draft report to be approved at its next meeting on January 12, 2017.

## **7. Review Robina Institute Memo of Understanding**

Chair Dietzen called on Executive Director Reitz who explained that this was on the agenda as an action item; however, there were still changes that must be made by the Robina Institute before its final approval.

Chair Dietzen asked members if there were any questions about the MOU. Chair Dietzen called for a motion to put the item on the agenda for January 12, 2017.

**Motion** by Vice-Chair Schellhas and second by Ms. Estrada to move the item to the January 12, 2017, Commission agenda.

**Motion carried** unanimously.

## **8. Repeat Violent Offender Research Proposal**

This was on the agenda as a discussion item. Chair Dietzen called on Commissioner Roy who presented the Commission with a memorandum dated December 30, 2016, which drafted a Guidelines Research Project with an objective of answering three main questions:

1. What is the violent recidivism risk for prisoners who would be eligible for the proposed legislation?
2. If the proposal went into effect, to what extent would it prevent repeat violent offenses from occurring?
3. What would be the cost from the increase in penalties (i.e., additional imprisonment versus the estimated benefits resulting from a reduction in violent recidivism?

The Commission discussed the memorandum and research questions. Chair Dietzen asked Executive Director Reitz to put the item on the Commission's working agenda to be heard again no later than March 2017.

## **9. Director's Report**

Chair Dietzen called on Executive Director Reitz who reported on three items: 1) Commissioners, as public officials, must fill out an annual statement of economic

interest recertification form from the Minnesota Campaign Finance and Public Disclosure Board which is due after January 1, but before January 30, 2017; 2) the Commission will meet in the Administration Building, Room 116C, when the Legislature is in session and will most likely meet in the Minnesota Senate Building otherwise; and 3) the next Commission meeting will be Thursday, January 12, 2017.

## **10. Public Input**

Chair Dietzen called on members of the public present and asked if anyone wished to speak. No one came forward.

## **11. Adjournment**

**Motion** to adjourn by Vice-Chair Schellhas.

**Motion carried** without objection.

The meeting was adjourned at 12:01 p.m.