

**Minnesota Sentencing Guidelines Commission
Non-Verbatim Summary of Public Hearing
December 21, 2016**

The Minnesota Sentencing Guidelines Commission held a public hearing on Wednesday, December 21, 2016, in Room 1100, 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, Cathryn Middlebrook, Peter Orput, Commissioner of Corrections Tom Roy, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Brian E. Oliver, Jill Payne and Anne Wall.

A number of members of the public were present. The room's posted capacity was 190, and the room appeared to be well over half-full.

1. Call to Order

Chair Dietzen called the public hearing to order at 2:00 p.m.

2. Purpose of Hearing and Public Hearing Procedures

Chair Dietzen explained that the purpose of the public hearing was to take public testimony on the proposed modifications to the Minnesota Sentencing Guidelines and Commentary resulting from legislative amendments and non-legislative modifications. Chair Dietzen explained the three proposed modifications:

A. Prior Controlled Substance Offenses in Criminal History:

Chair Dietzen explained that, on November 17, 2016, the Commission decided that, in calculating a Defendant's criminal History score, prior drug convictions were not to be recalculated using post-August 1, 2016 drug threshold weights. Chair Dietzen said that the rationale was that Guidelines Comment 2.B.106 applies only to added

or removed elements of the offense and does not apply to modifications of an element, and that, because the changes to the controlled substance laws modified an element, recalculation is not necessary. Chair Dietzen explained that Comment 2.B.106 was changed to clarify this, and to correct previous, incorrect, contrary training guidance that had been issued by MSGC staff.

Chair Dietzen explained that, also on November 17, 2016, the Commission proposed to modify the Guidelines by adding a new subsection 2.B.7.c and a new Comment 2.B.704, and that if the proposal were to take effect, for prior Minnesota controlled substance offenses in the first, second, third, or fifth degree committed before August 1, 2016, the current felony offense of the same name would determine the offense classification in calculating the criminal history score unless it is proven that the facts would have supported a conviction of a lesser degree. Chair Dietzen said that the modifications for this proposal were detailed in Section A of the public hearing notice, entitled “Proposed Modifications to the Sentencing Guidelines and Commentary.”

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

Chair Dietzen explained that, on October 26, 2016, the Commission proposed to modify the Guidelines in MSG §§ 5.A and 5.B by re-ranking child neglect and endangerment under Minn. Stat. § 609.378 at Severity Level 5, and that the offense was currently ranked at Severity Level 1. Chair Dietzen said that the modifications for this proposal were detailed in Section B of the “Proposed Modifications to the Sentencing Guidelines and Commentary.”

C. Modifying the Permissive Consecutive Sentencing List:

Chair Dietzen explained that, also on October 26, 2016, the Commission proposed to modify the Guidelines in MSG § 6, and add interference with a body or scene of death under Minn. Stat. § 609.502, subd. 1(1), to the list of offenses eligible for permissive consecutive sentences. Chair Dietzen said that the modifications for this

proposal were detailed in Section C of the “Proposed Modifications to the Sentencing Guidelines and Commentary.”

Chair Dietzen explained that copies of the proposed modifications were made available in the room and were made available on the Commission’s website beginning Monday, November 21, 2016. Chair Dietzen explained that there were 19 people who had registered in advance of the public hearing, and that these people would be called to testify first.

Chair Dietzen explained that, after pre-registered people were allowed to speak, others who wished to speak would be allowed to come forward and register their name, street address, phone number, and the names of any individuals or associations that the person represents in connection with the public hearing. Chair Dietzen explained that testifiers were allowed to address questions to the Commission, its staff, or witnesses and that the Commission or its staff may ask questions of testifiers.

Chair Dietzen announced that the Commission would hold the record open for five calendar days after the public hearing to accept written comments, and on Friday, December 30, 2016, the Commission would meet at 10:00 a.m. in Room 1200, Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155, to formally adopt or reject the proposed modifications.

Chair Dietzen said that, if adopted, modifications resulting from legislative amendments become effective August 1, 2017, or on a date ordered by the Commission, and modifications resulting from non-legislative modifications would become effective August 1, 2017, unless the Legislature by law provided otherwise.

3. Public Testimony

The following is a list of those who testified at the public hearing, together with a brief, non-verbatim summary of their comments. Many of the speakers supplemented their testimony with written comments, which are part of the record of the hearing.

- **Robert Small, Minn. County Attorneys Association (MCAA):**

Judge Small expressed concerns about both the procedures and the merits of the Commission's proposal to modify Guidelines § 2.B.7. One concern was that the changes were not just related to drug felonies, but rather affected many non-drug felonies for which offenders may have previous convictions for drug felonies. Judge Small said that, beyond that, the proposed modifications were procedurally a way to avoid having the issue reviewed by the Legislature.

- **Dawn Nyhus, Sherburne County Attorney Office:**

Ms. Nyhus spoke in favor of the Commission's proposal to re-rank child neglect and endangerment under Minn. Stat. § 609.378, from Severity Level 1 to Severity Level 5. Ms. Nyhus spoke of a serious child neglect case that resulted in severe harm to a two- and three-year-old. In that case, because of the fact that child neglect was only a Severity Level 1 offense, it was not possible to get a sentence commensurate with the harm that was caused. Ms. Nyhus also spoke in favor of the MCAA's position on the weighting of prior drug offenses.

- **Brock Hunter, Minn. Association of Criminal Defense Attorneys:**

Mr. Hunter said that it was important for the Commission to reflect the continued modifications of drug laws made by the Legislature. Mr. Hunter said that the intent of these new laws was that, because the drug laws in Minnesota had become overly harsh, it was important that low-level drug offenders be given a second chance and the benefit of the doubt.

- **Gina Marie Evans, Minn. Adult & Teen Challenge:**

Ms. Evans spoke of her personal experience as a former drug addict with 13 years of sobriety. She said that when she was a drug addict, her first conviction for a non-drug crime sent her to prison because of how criminal history points were assigned. She said that drug addiction is a public health issue, not a criminal justice issue, and that the changes proposed to how criminal history points are given to offenders for drug crimes is a step in the right direction.

- **Mariah Wilberg:**

Ms. Wilberg stated that she was a former drug user who was released from prison in 2013 and was able to succeed because of evidence-based recovery strategies. Ms. Wilberg asked the Commission to deny the Minn. County Attorneys Association proposal. Ms. Wilberg said it was important to give people opportunities for second chances.

- **William Ward, Minn. State Public Defender:**

Mr. Ward testified that the drug act was a historic, long-overdue step by the Legislature. He stated that the previous drug laws in the state had resulted in the over criminalization of drug crimes and that there was a clear racial disparity for low-level offenders. Mr. Ward urged the Commission to move forward with its proposal to add Guidelines § 2.B.7.c.

- **Randy Anderson, RS EDEN/Eden House:**

Mr. Anderson testified that he was a former addict who had been sober since 2005 and was testifying as a professional involved in treatment. Mr. Anderson said that the drug addiction was a brain disease that had been viewed as a moral failure for too long. He said that the state must not arrest and incarcerate addiction away and that treating it as a health issue had the greatest chance of success. Mr. Anderson said that the Minn. County Attorneys Association's proposal would be a step backwards and against the intent of drug reform.

- **Stephen Keeler, Church of All Nations:**

Mr. Keeler testified as a person of faith who had worked with addicted youth but were unable to get help and that three of the kids he tried to help were now dead. He said that drug addiction was a public health issue and that it was important for the Commission to follow the intent of the Legislature in passing drug reform laws.

- **Amity Foster, Take Action Minnesota:**

Ms. Foster spoke as the sister of a younger brother who had been in prison for meth crimes and burglary. She said that she was very worried about the effect that the drug laws had had on her brother and his son (her nephew). She said that her brother's past was his past, and that it should not be held against him now, and that there needed to be changes in the drug statutes.

- **Jenny Johnson, testifying on behalf of Keith A. Roberts, Ph.D.:**

Ms. Johnson read the written testimony of Keith A. Roberts, Ph.D., who could not be present due to illness. In the testimony, Dr. Roberts said that Minnesota's drug laws were part of systemic racism and he gave evidence of this by pointing out that, while black people only represent five percent of the state's population, they represent 30 percent of the prison population. Dr. Roberts was opposed to increasingly more punitive sentencing of drug offenders and wrote that it was tied to declining performances of children in school while their parents were incarcerated.

- **Caroline Palmer, Minn. Coalition Against Sexual Assault (MNCASA):**

Ms. Palmer was representing victims of sexual assault. She said that she had concerns that the proposed changes in Guidelines § 2.B.7 may reduce the sentences of some sex offenders, and thereby change some presumptive dispositions from "Commit" to "Stay." Ms. Palmer also said that consideration needed to be given to the role that drugs played in sex trafficking offenses.

- Randee Edmundson, ISAIAH – Grace University Lutheran Church:**

Ms. Edmundson testified as a GED teacher at Stillwater’s jail. She stated that many offenders in jail had a strong desire to learn but that the setup of the jail made learning difficult. Ms. Edmundson said that addiction is a disease and that drug offenders would do much better in the community with support.
- Suzula R. Bidon:**

Ms. Bidon spoke as an attorney who had been a drug addict as a young adult. She said that she had gone to prison for drug crimes but was unable to get help for her addiction while locked up. Ms. Bidon read from the recently published Surgeon General’s report, found at <https://addiction.surgeongeneral.gov/>, which classified addiction as a brain disease.
- Amy Levad, Associate Professor of Moral Theology, University of St. Thomas:**

Prof. Levad testified that the drug policies of the state needed to reflect the intent of the laws, and that the application of the Sentencing Guidelines criminal history needed to reflect the legislative intent to give more flexibility in treating low-level drug offenders. Prof. Levad said that a failure to update the policy would make the application of law arbitrary; the practice must be consistent with the current law. Prof. Levad said that harsh penalties do not help addicts, and that placing more people in prison takes up valuable community resources that could otherwise go towards treatment.
- Angela Porter, MN Association of Black Lawyers (MABL):**

Ms. Porter testified that the war on drugs was actually a war on black people and said that while six percent of the state population of Minnesota was black, 18 percent of the state prison population was black. She said that in recent years, as there started to be a meth problem with whites, action was taken, but that it was not enough. Ms. Porter said that over 12,000 black Minnesota drug users were affected by the drug policy. Ms. Porter opposed the request made by the Minn. County Attorneys Association. Ms. Porter was opposed to changes that would mean more

people who were addicted to drugs would serve longer prison sentences because the result would be even worse racial disparities in our criminal justice system.

- **Jane Legwold, ISAIAH:**

Ms. Legwold spoke as a nurse who was in favor of a policy proposal that would match the drug reform laws. Ms. Legwold said that the intent of the law changes should be reflected in the Commission's policy. Ms. Legwold said that the brain does not fully develop until the age of 25 and that many drug users begin using early in life due to related impulsivity. She further testified that others start using drugs shortly after trauma. Ms. Legwold said that these people needed therapy instead of punishment.

- **Rev. Gloria Roach Thomas, Camphor Memorial United Methodist Church:**

Rev. Roach Thomas testified saying that the recent changes in drug laws in Minnesota were important because they started treating drug offenders as people. Rev. Roach Thomas said that continued humane and just policies needed to be put forth and the calculation of criminal history scores needed to reflect the legislative changes that had been enacted. Rev. Roach Thomas likened the application of old drug standards to new sentences to sewing a new patch on an old garment, or putting new wine into old wineskins, which were cautioned against in the parable in Matthew 9:14-17.

- **Joshua Esmay, Legal Rights Center:**

Mr. Esmay testified that the Commission should either: add Guidelines § 2.B.7.c; or revoke the changes to Comment 2.B.106. Mr. Esmay stated that the Legislature had changed the drug statutes to help low-level drug offenders. He said that the current criminal history score was overly affected by non-violent offenses and urged that the resolution put forth by the Minn. County Attorneys Association be rejected.

- **Larry Moloney, ISALAH/Saint Joan of Arc:**

Mr. Moloney spoke as a former attorney, legal aid worker, and member of ISALAH who asked the Commission to not go backwards in its efforts to reform drug laws. Mr. Moloney spoke about how difficult reentry is for people with criminal pasts. Mr. Moloney spoke of Pope Francis's call to be merciful.

- **Nadine Graves, Mitchell Hamline School of Law, BLASA, We Are All Criminals:**

Ms. Graves asked that the Commission deny the Minn. County Attorneys Association's request to use harsher criminal history scores because it goes against the Legislative intent of the drug act. Ms. Graves said that it was the moral responsibility to take into consideration racial disparities. Ms. Graves cited the racial make-up of people incarcerated in MCF-Shakopee and MCF-Lino Lakes as compared to the total population of the state. For example, in MCF-Shakopee, the American Indian or Alaskan prison population is 20 percent compared to the Minnesota population of 1.2 percent, and the black prison population is 14 percent compared to six percent in the state population of Minnesota.

- **Lisa Hallberg, Public Defender:**

Ms. Hallberg spoke as a practicing Assistant Public Defender, formerly in Ramsey County and now in Anoka and Sherburne counties. Ms. Hallberg said that the practical challenges of determining her client's criminal history scores according to the new drug thresholds would not be overly burdensome. Ms. Hallberg said that it was, in fact, part of her job to double check the work of probation to ensure that her clients' criminal history scores were accurately calculated.

- **Rep. Brian Johnson:**

Rep. Johnson, Vice-Chair of the Public Safety Committee, testified on behalf of his constituency and not on behalf of the Committee. Rep. Johnson expressed disappointment with the Commission and said that the proposal was contrary to the legislative intent of the drug act. Rep. Johnson said that the legislature would prefer that the MSGC propose such a change to the Legislature, rather than effectuate

such a change on its own. Rep. Johnson said that the will of four people (a hypothetical bare majority of a minimum MSGC quorum) should not be empowered to make a policy change that would consume a number of committee hearings if heard by the Legislature.

- **Bill Lerman, Jewish Community Action**

Mr. Lerman said that prison does not change behavior and it was important to treat people as people and not as labels. He said that it may seem insignificant to refer to people as “criminals” or “offenders” but terminology is important. Mr. Lerman suggested that anyone who has committed even a minor infraction such as jaywalking or speeding could be labeled “a criminal.” Mr. Lerman said that the Commission should continue the progress and not go backwards.

- **Kevin Pedelty**

Mr. Pedelty spoke as a taxpayer and a homeowner. Mr. Pedelty said that it would appear that the purpose of drug reform was intended to soften the penalty especially considering the racial disparity issues. He said that society should treat addiction as an illness and that cancer patients would never be incarcerated without access to cancer treatment.

- **Brian Fullman, ISAIAH**

Mr. Fullman observed that there were no black members on the Commission and he was uncomfortable with that fact. Mr. Fullman gave his personal account of being addicted to drugs and incarcerated in prison. Mr. Fullman said that he did not learn anything in prison and that it was a warehouse. Mr. Fullman said that there was no need to extend sentence lengths.

Joseph Amrhein signed up in advance to testify but did not give testimony. During the course of the public hearing, the Chair called Mr. Amrhein’s name twice.

The Chair called upon anyone else present who wished to speak. No one else came forward to speak.

4. Adjournment

Chair Dietzen called for a motion to adjourn.

Motion to adjourn by Vice-Chair Schellhas.

Motion carried without objection.

The public hearing was adjourned at 3:52 p.m.