

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
October 26, 2016

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on October 26, 2016, in Room 1100 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 Angela Champagne-From, Valerie Estrada, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Kathleen Madland, Linda McBrayer, Jill Payne and Anne Wall. Assistant Attorney General Jim Early was also present.

Members of the public present included Kathleen Cole, Metropolitan State University; Joyce Bonafield-Pierce and Amy Levad, University of St. Thomas; Nicole Lawson, St. Paul Public Schools; Mariana and Monty Schunk; Lars Negstad, JaNae Bates, Stephen Keller, Dan Quinllin, Sarah Mullins, Paul Washington, Larry Mulone, Bruce Nordstrom-Loeb, Isaiah MN; Josh Esmay and Nathaniel Gurol, Legal Rights Center; Lisa Netzer and Rebecca Holmes Larson, Minn. Department of Corrections; Robert Small, Executive Director of the Minn. County Attorneys Association; Gil Gustafson and Justin Terrell, Sophia Hansen-Day, Take Action Minnesota; Sara Thomas, Mitchell Hamline School of Law; A.J. Lagoe and Bill Middeke, Kare11; Tom Marver, Rachel English, Hannah Slofut, Jewish Community Action; Lynn Daniels, Minneapolis Public Schools (MPS); Josh Esmay, Legal Rights Center; Ryan Erdmann, Minnesota Association of Community Corrections Act Counties (MACCAC); Tam Knapton, Mayflower Church; Kimberly Colbert, St. Paul Federation of Teachers (SPPS); Lisa R. Buckner; Molly Holder; Ras Tafari; Ian Kantonen, Minnesota Public Interest Research Group (MPIRG); and Nadine Graves, We Are All Criminals.

1. Call to Order

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

2. Welcome and Introduce New Members

Chair Dietzen introduced Valerie Estrada who is the newly appointed probation officer member. Ms. Estrada is a Career Probation Officer with Hennepin County Community Corrections & Rehabilitation. Ms. Estrada said that she was excited to join the Commission and recognized the importance of the work.

Chair Dietzen introduced Peter Orput who is the newly appointed county attorney member. Mr. Orput has served as Washington County Attorney since January 2011. Mr. Orput said that he was privileged and honored to be appointed and was interested in victim issues.

3. Approval of Agenda

This was on the agenda as an action item.

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

Motion carried unanimously.

4A. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Sgt. Ford and second by Ms. Middlebrook to approve the meeting minutes from September 28, 2016.

Motion carried unanimously.

4B. Weighting Prior Drug Offenses

This was on the agenda as a discussion and possible action item.

Chair Dietzen explained that this was on the agenda and that there were procedural issues about whether or not a public hearing was necessary. Chair Dietzen called on Executive Director Reitz to explain the item.

Executive Director Reitz explained that some practitioners have expressed concerns about training guidance from MSGC staff about how to assign weights to prior drug offenses that occurred prior to August 1, 2016, for purposes of calculating criminal history scores for current offenses with offense dates on or after August 1, 2016.

Executive Director Reitz explained that the current policy in SGC § 2.B.1 states that the current severity levels and offense definitions control the weight assigned to prior offenses; however, because the Legislature changed the elements of 1st, 2nd, 3rd, and 5th degree controlled substance offenses, some practitioners disagree with this approach arguing that the policy should be changed to equate pre-August 1, 2016 drug offenses with post-August 1, 2016 offenses of the same name, notwithstanding the change in elements.

Robert Small, Executive Director of the Minn. County Attorneys Association, addressed the Commission, saying that he appreciated the opportunity and wanted to address two problems with the policy for weighting prior drug offenses, effective August 1, 2016:

First, there was a practical problem with administering the current policy. For examples, in order for probation officers to prepare a sentencing guidelines worksheet, they are expected to determine the type of drug and amount of drug for prior offenses based on information in the criminal complaints to determine elements, and that for some cases, the relevant information sought about drug amounts and types was absent.

Second, there was inconsistency with the Guidelines policy as it is applied to prior drug offenses vs. prior theft offenses. For example, with prior theft offenses, the weight for the criminal history score is based on the severity level of the offense when the *prior* theft offense was committed.

The Commission discussed the issue, the procedures for holding a public hearing, possible policy changes, the impact that changes would have on criminal history scores, and the implications that the policy may have on court procedures for seeking an aggravated sentence under *Blakely v. Washington*, 542 U.S. 296, 301-305 (2004).

Chair Dietzen asked that the item be put on the agenda for November 17, 2016.

5. Life Sentences for Juveniles in Minnesota

This was on the agenda as a presentation and discussion item.

Chair Dietzen called on representative from the Minnesota Department of Corrections. Associate General Counsel Lisa Netzer and Executive Officer of Hearings and Release

Rebecca Holmes Larson presented an overview of the parole review process in Minnesota. Ms. Holmes Larson gave information on the purpose of the panel, timeline for review, number of people who have been reviewed and granted parole, and data on recidivism.

The Commission discussed the issue and asked questions of the speakers. Chair Dietzen thanked the speakers and said that the presentation was scheduled because the Commission is considering making recommendations to the Legislature regarding the life sentencing of juveniles.

6. Repeat Violent Offenders

This was on the agenda as a discussion and possible action item.

Chair Dietzen called on Senior Research Analysis Specialist Anne Wall to explain the item. Ms. Wall said that the severe violent offender proposal would create a Severe Offender Grid and give higher criminal history weights to prior “severe violent crimes.” Vice-Chair Schellhas gave further background on the proposal and said that it was a Guidelines-approach to the issue of repeat violent offenders as opposed to a Legislative-approach, and that the list of severe violent crimes was not yet determined; the list that was presented was intended as a starting point for the Commission’s discussion.

Chair Dietzen called on Executive Director Nate Reitz who presented a summary of the U.S. Sentencing Commission’s, *Comprehensive Overview; Recidivism Among Federal Offenders*. The study used 2005 release cohort data and showed that re-arrests were higher among career offenders/armed career criminals (48.7% for “no career offender” vs. 69.5% for “career offender/armed career criminal).

The Commission discussed the item, evidence-based research and practices, and asked questions about the progress of the memorandum of understanding (MOU) between MSGC and the Robina Institute for the criminal history recidivism project.

Chair Dietzen asked the Commission how it wished to proceed with the item. Vice-Chair Schellhas said that she would like to keep the item moving forward. Chair Dietzen asked that the item be put on the agenda for November 17, 2016.

7. The Severity Level of Child Neglect and Endangerment

This was on the agenda as a presentation, discussion and possible action item.

Chair Dietzen called on Executive Director Reitz who reminded the Commission that, at its September 28, 2016, meeting, it heard from guest presenter, Assistant Sherburne County Attorney Dawn R. Nyhus who requested that the Commission review the Severity-Level 1 ranking for child neglect and endangerment under Minn. Stat. § 609.378. At the September meeting, the Commission asked MSGC staff to present additional information at today's meeting on crime definitions, jury instructions, and estimated bed impact.

Motion by Judge Lennon and second by Sgt. Ford to rank child neglect and endangerment under Minn. Stat. § 609.378, at Severity Level 5 because it is comparable to deprivation of vulnerable adult under Minn. Stat. § 609.233, subd. 3(2) which is ranked at Severity Level 5.

A discussion ensued in which the Commission asked which severity-level ranking was proposed by Assistant Sherburne County Attorney Dawn R. Nyhus at the September meeting. Ms. Nyhus had recommended a Severity Level 4.

Motion carried on a 7-2 vote. Ms. Middlebrook and Judge Wernick voted against the motion because of the Severity Level 5 ranking; both Commissioners would have voted in favor had the motion been to rank the offense at Severity Level 4.

8. Permissive Consecutive Sentencing List

This was on the agenda as a presentation, discussion and possible action item.

Chair Dietzen called on Executive Director Reitz who explained that the Commission ranked interfering with a body or scene of death under Minn. Stat. § 609.502, subd. 1 at Severity Level 4, effective August 1, 2016. However, the Commission postponed the decision of whether or not to put it on the list of offenses eligible for permissive consecutive sentencing in MSG § 6, until after it could review the rationale for the permissive consecutive list and the list in its entirety. The Commission reviewed the policy for permissive consecutive sentencing, the permissive consecutive list in MSG § 6, and the effect of *Blakely v. Washington*, 542 U.S. 296, 301-305 (2004).

Motion by Vice-Chair Schellhas and second by Mr. Orput to include interfering with a body or scene of death under Minn. Stat. § 609.502, subd. 1, to the list of [person] offenses eligible for permissive consecutive sentencing in MSG § 6.

Executive Director Reitz made a point of clarification on the motion: the list of eligible offenses for permissive consecutive sentences in MSG § 6 was not referred to as a "person" offense list. The maker of the motion omitted the reference to

“person” offenses; there were no objections to the **amendment**. A discussion ensued.

Motion carried on a 5-4 vote.

9. Executive Director’s Report

Chair Dietzen called on Executive Director Reitz who reported on three items: 1) The new Research Analyst position that has been filled by Brian E. Oliver who will start work Wednesday, November 2, 2016; 2) MSBA’s President, Robin Wolpert, was contacted about the juvenile life without parole issue and it would appear that the Commission’s and MSBA’s interests overlap, except for an analysis of the minimum term of imprisonment a person must serve before becoming eligible for release, which is not MSBA’s primary purpose for its workgroup; 3) The Commission’s next meeting is Thursday, November 17, 2016, in order to avoid a meeting the following Wednesday which is the week of Thanksgiving.

10. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak. Six people came forward.

Josh Esmay, Legal Rights Center, spoke in opposition to making policy changes for serious repeat offenders without more data. He urged the Commission to move with caution to yield public safety and avoid mass incarceration.

Nadine Graves, We Are All Criminals, spoke on behalf of a person who is in a Minn. Department of Correction’s facility. Ms. Graves read a “Letter from person who committed a crime in Minnesota.” In part the letter read, “I’m a currently incarcerated man. I came into prison at the age of 18 and this is where I have been for the last 12 years. When I came to prison I took full responsibility for the actions that landed me here and was completely prepared to pay my debt to society, but what I was not prepared for was to pay my debt to MINNCOR.” The letter was submitted to Commission staff and will be available in November’s meeting materials.

Kathleen Cole, Associate Professor, Metropolitan State University, spoke in opposition to the serious offender policy change because it is ineffective and is bad for budgets. Ms. Cole

said that these types of policy decisions do not deter crime and Minnesota should learn from states like California and Mississippi that have moved away from such policies.

Paul Washington, Isaiah MN, spoke as a person of faith who believes in safe communities and stated that locking people up will not accomplish this. He said that high recidivism rates are an example of structural failures such as poverty. He suggested that people look at crime as a whole.

Justin Terrell, Take Action Minnesota, spoke in favor of reform that would end mass incarceration. He thanked the Commission for the work that they had done and its efforts to take the matter seriously and look at the research and listen to the public's comments. He urged that there be no "flashback" proposals and he suggested that harsher sentences do not deter bad behavior.

Mariana Schunk thanked the Commission for its serious offender policy proposal. She said that she read the letters in the meeting materials opposing serious offender reform. However, she would like to see the proposal move forward. She stated that examples of past behavior do make a difference and people who commit heinous crimes are a threat to the community.

Chair Dietzen thanked the members of the public for their testimony.

11. Adjournment

Chair Dietzen called for a motion to adjourn.

Motion to adjourn by Judge Lennon.

Motion carried unanimously.

The meeting was adjourned at 4:25 p.m.