

Public Hearing Summary

Hearing Date: December 17, 2020

A public hearing of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 17, 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 November 16, 2020.

Commission members present electronically were Commission Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada, and Commission members Justice (Ret.) Christopher Dietzen, Abby Honold, Tonja Honsey, Kyra Ladd, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commander Salim Omari.

Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically included Alex Bunger, Minn. Department of Corrections; Rep. Matthew Grossell, Minn. House of Representatives; James Johnson; Kate Gilbertson; John Hultquist, Minn. House of Representatives Research Consultant, Republican Caucus; Robert Small, Minn. County Attorneys Association; and Ben Johnson, Minn. House of Representatives Research.

1. Call to Order

Chair Mitchell called the public hearing to order at 1:00 p.m. and welcomed those in attendance.

2. Opening Statement

Chair Mitchell announced the purpose of the public hearing, to give interested persons the opportunity to present statements regarding proposed modifications to the Minnesota Sentencing Guidelines and Commentary resulting from legislative amendments and non-legislative amendments.

Chair Mitchell explained that no one had registered in advance with Commission staff. Chair Mitchell explained that any person present who wished to testify might still do so by contacting staff by e-mail or phone and registering their name, address, telephone number, and the names of any individuals or associations that the person represented in connection with the hearing.

Chair Mitchell explained the reasons and authority for the hearing being conducted by telephonic and electronic means. Chair Mitchell stated that members of the public were able to monitor the hearing remotely by telephone or computer with instructions posted on the MSGC website.

Chair Mitchell announced that people might make oral or written statements at the hearing regarding the proposed amendments, and might also address questions about the proposed amendments to the Commission, its staff, or witnesses, and that the Commission or its staff might ask questions of those making oral statements. Chair Mitchell explained that a copy of the proposal was published and made available on the Commission's website beginning Monday, November 16, 2020.

Chair Mitchell stated the record would remain open for five calendar days to accept and record written materials. Chair Mitchell stated that, on Thursday, January 14, 2021, the Commission would meet at 1:00 p.m. to finally adopt or reject the proposal.

3. Public Testimony

Chair Mitchell called on members of the public who wished to speak. No member of the public contacted staff expressing their interest in giving testimony. Chair Mitchell announced the time as 1:07 p.m. and said the public hearing would remain open until 1:10 p.m. to give any interested party enough time to contact staff and register to speak. No one contacted staff during that time, so there was no public testimony.

4. Adjournment

Chair Mitchell adjourned the public hearing at 1:10 p.m., without objection.

5. Written Testimony

After the public hearing, the record remained open for five calendar days—through December 22, 2020—to accept written comments. The Commission received three written comments during this period, which are part of the public hearing record.

T H E M I N N E S O T A
C O U N T Y A T T O R N E Y S
A S S O C I A T I O N

December 18, 2020

Members of the Minnesota Sentencing Guidelines Commission
658 Cedar Street, Suite G-58
St. Paul, MN 55155

Re: Public Comment on proposed modifications to the 2020
Minnesota Sentencing Guidelines and Commentary

Dear Commission Members:

I write on behalf of the Minnesota County Attorneys Association to voice our disappointment and displeasure at the Commission's decision not to increase the severity level for repeat child pornography disseminators and possessors. The reasons for increasing the severity level for these enhanced offenses were well articulated by Commissioner Larkin (Minnesota Court of Appeals Judge) and supported by Commissioners Dietzen (Associate Supreme Court Justice (Retired)), Mark (First Judicial District Court Judge), and Ladd (Wadena County Attorney). We agree with that reasoning and urge the Commission to reconsider increasing the severity level for repeat offenders who possess or disseminate child pornography.

Thank you for the opportunity to submit our Association's views.

Sincerely,



Robert M. Small
Executive Director

cc: Janet Reiter, President MCAA

Matt Grossell
State Representative



Minnesota House of Representatives

District 2A
Beltrami, Clearwater,
Hubbard & Lake of the Woods
Counties

December 18, 2020

Kelly Mitchell, Chair
Minnesota Sentencing Guidelines Commission
658 Cedar Street, Suite G-58
St. Paul, MN 55155

RE: Public Hearing on Child Pornography Rankings
(Child sexual assault, torture and sexual abuse imagery and video)

Dear Chair Mitchell and Sentencing Guidelines Commission Members:

This letter is in response to the Sentencing Guidelines Commission's request for public comment on the proposed reranking of child pornography offenses. I am the State Representative who chief-authored the underlying bill (House File 89) that was included in the 2019 Public Safety Omnibus which directed the Sentencing Guidelines Commission to review and consider modifying the ranking of child pornography offenses following the legislative changes we made to Chapters 617.246 and 617.247.

I appreciate the Sentencing Guidelines Commission reranking the use of a minor in sexual performance, subsequent act by predatory offender or with a child under age 13, from severity level D to severity level C, and reranking the use of minor in sexual performance from severity level E to severity level D; however, the Sentencing Guidelines Commission missed an opportunity by not reranking dissemination and possession offenses with a higher severity level.

In my career as a Clearwater County Deputy Sheriff, and now as a Minnesota State Representative, I have worked alongside colleagues who work tirelessly on child pornography crimes. I can tell you from what these investigators have told me is that most of the perpetrators who possess and disseminate child pornography are not just casual viewers; they are also actors. This information is also included in a Canadian study that I was referred to by the MN BCA. And every time someone clicks on a pornographic image of a child being raped, tortured or sexually abused, the child is revictimized over and over again and again. This crime leaves the victim with a lifetime of trauma.

I also realize that the Sentencing Guidelines Commission did not consider mandatory minimum sentences, but I also strongly believe that we need to get these people off the streets so they do not continue to victimize children. Our investigators are continuously trying to get their cases heard before federal courts because that is the only place they will receive any kind of justice for the child victims. That should paint a very clear picture that our state child pornography statutes are severely lacking.

Thank you for your consideration of my comments. I will continue to work on this issue during the upcoming legislative session.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Grossell". The signature is written in a cursive style with a large, stylized initial "M".

Representative Matt Grossell
House District 2A

Statement of Professor Richard S. Frase, University of Minnesota Law School,
regarding the proposed 2021 modification of rules for scoring criminal history points

For the reasons stated below, I do not support the proposed changes in the scoring of criminal history points, and would urge the Commission to either make no changes, or make the different changes I've suggested in paragraph 2.

1. On its face, the proposal seems like it's just clarifying a pro-defendant change, as of the August 2019 amendments, in how custody status (CS) points are scored – that $\frac{1}{2}$ CS points are rounded down or ignored, just like partial felony points, misdemeanor units less than four, and single felony-level juvenile priors. But on closer reading it appears that what this change does is partially nullify the effect of adopting $\frac{1}{2}$ CS points -- the separate felony round-down provision is being deleted and incorporated into a general round-down rule; this means that any felony point score ending in .5 will add another CH point when combined with a $\frac{1}{2}$ CS point, thus eliminating any benefit to such an offender from the August 2019 CS change. This can be illustrated by the Commission's second example in proposed revised comment 2.B.04. That example assumes a $1\frac{1}{2}$ -felony-points offender [e.g., 1 pt + $\frac{1}{2}$ pt] who has custody status that used to add 1 point and now adds $\frac{1}{2}$ point. Under the proposed 2021 change, such an offender gets no benefit from the August 2019 amendment – he has a CH score of 2 both before and after that amendment. [Before: $1\frac{1}{2}$ felony pts --> 1 felony pt., plus 1 CS pt., = 2 CH points; After, under the 2021 proposal: $1\frac{1}{2}$ felony pts., + $\frac{1}{2}$ CS pt., = 2 CH points.] By contrast, under the current guidelines language (without the proposed 2021 change), this offender's $1\frac{1}{2}$ felony points total would be rounded down to 1.0 before felony points are added to the CH score; then, since the grid only allows whole-point CH scores, when the $\frac{1}{2}$ CS point is added in most judges would probably round CH down to 1, rather than round 1.5 up to 2. This also makes sense because it means that all four score components are treated the same – partial points and their equivalents are ignored in computing each component.

2. It would be good to make this result (ignore $\frac{1}{2}$ CS points) explicit. I think that could best be accomplished by revising the August 2019 language to state that no CS points are scored for offenders who qualify for $\frac{1}{2}$ point under the original language. Instead, as the above example shows, the proposed clarification actually nullifies the August 2019 change in CS scoring for any offender with a felony-points score ending in .5 (X.5 offenders). Oddly enough, the 2019 change still helps offenders with a felony-points score ending in .0 (X.0 offenders). In the above example, if the offender had a felony-points total of 2.0, consisting of a one-point felony and two half-point felonies, his CS would have added one point prior to the August 2019 change, giving him a CH score of 3; after the 2019 change he would have a CH score 2, with or without the proposed 2021 change (assuming, again, that without the proposed 2021 change judges would round a CH score of 2.5 down to 2, rather than up to 3). Note also that this X.0 offender has one more prior felony than the X.5 example in paragraph 1 above, yet they both end up with a CH score of 2.

3. In addition to the anomaly of treating X.5-felony-point offenders less favorably than X.0 offenders, and the further anomaly of ignoring partial points and their equivalents for

misdemeanor and juvenile priors but not for low-level-felony priors and custody status, the proposed 2021 change also undercuts an important policy goal -- limiting prison commitments and durations for low-severity property offenders --that supported the 1989 decision to assign only a ½ point to severity level 1 and 2 felony priors. Many ½ CS point offenders have committed low-severity property crimes, both as prior and as current offenses.

4. There are also several other good reasons why the Commission should limit the impact of prior record wherever it can. As Robina Institute research and research by myself and other scholars has shown, prior record enhancements have weak policy justifications and many adverse consequences, including strongly disparate impacts on African American and Native American offenders. Moreover, all of the adverse impacts of prior record have increased over time -- steadily-rising CH scores have driven more and more low- and medium-severity offenders across the grid disposition lines into presumptive-prison grid cells (and have driven all offenders to higher prison-duration cells even if the line isn't crossed).