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**Subject:** Agenda Item Six, MSGC FY24-25 Budget Change Requests (Action), 9/8/22 Meeting  
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Nate, would you please distribute this email to all of the Commissioners so they have notice of what I intend to do tomorrow?

Greetings, please note, I plan to move to amend tomorrow's agenda to change item six from an action item to a discussion item, which would both comply with the Commission's first-reading rule and enable the Commission to meet the October 17 deadline for budget change requests.

The first-reading rule can be found at [https://mn.gov/sentencing-guidelines/assets/5B2-MSGC\\_MeetingRules\\_tcm30-512829.pdf](https://mn.gov/sentencing-guidelines/assets/5B2-MSGC_MeetingRules_tcm30-512829.pdf). The rule states:

Rule 2. First-Reading Rule. A motion to modify the Sentencing Guidelines is out of order, and therefore no action may be taken, unless the members were notified at least seven days before the meeting that such action might be taken at the meeting and the Commission has discussed the modifications, or a similar or prior version of the proposal, at a different Commission meeting within the previous two regular meetings.

I know that the budget change arguably is not a "motion to modify" the guidelines. But it is a motion to significantly rewrite them, described as follows: "Update the state's aging felony sentencing structure, ensuring that it is redesigned from the bottom-up to promote public safety." Thus, the budget-related motion squarely falls within the spirit of the rule, which was intended to ensure that Commission members have adequate time to study and discuss guidelines proposals before voting on them. As our attempt to resolve the half-custody point issue has shown, it takes time to fully appreciate the significance of a proposal and to arrive at an informed decision. The proposal to embark on a wholesale revision of Minnesota's Sentencing Guidelines surely merits more than one week's notice and a single commission discussion before a vote is expected.

As to the substance of the proposal, I am concerned about voting on and recommending a significant budget increase without first describing the desired outcome with more particularity. How can the Commission be expected to vote on the request for funding to effectuate significant, substantive changes to the guidelines without a meaningful discussion

of what those changes might be? My stakeholder group and I agree that the guidelines are too complicated and should be simplified. But there is work the Commission can do to better frame the comprehensive-review proposal before asking the Legislature to fund it. Perhaps the Commission could proceed as follows.

1. Discuss and determine if there is majority support for the proposed comprehensive review and revisions.
2. If there is support, begin the comprehensive review by identifying the issues that make our guidelines overly complicated and difficult to apply. The judicial, prosecutorial, defense, and probation members of the Commission can easily identify those issues for the Commission. In addition, Commission staff can identify the problem areas based on the calls and questions they receive, which is how the half-point issue came to our attention.
3. Once we have identified the problem areas, we can begin reviewing approaches used in other guidelines jurisdictions to determine the extent to which we might adopt those approaches. I note that when we were tasked with a comprehensive review of the child-pornography rankings, we had a series of presentations from multiple stakeholders regarding all aspects of the crime (e.g., investigation, prosecution, sentencing, treatment, recidivism, and victim impact). We could do something similar and invite representatives from other jurisdictions to provide an overview of their systems. I would include the federal system in this overview, because it is simple to use and does not generate the significant number of sentencing appeals that we see in Minnesota.
4. Once we have identified the areas within the guidelines that need simplification and alternative approaches to guidelines sentencing, we should attempt to reach consensus regarding the necessary changes.
5. Once we have consensus regarding the necessary changes, we can formulate a work plan to accomplish the changes in an efficient and cost-effective way.
6. Lastly, once we have a defined work plan, we could request funds, if necessary, to implement the plan.

In the absence of such a Commission-driven process, I am concerned that any changes will be top-down and directed by an unidentified law professor. The Commission is structured to represent all system stakeholders, and the Commissioners who represent those stakeholders should do the work necessary to improve the guidelines. I draw on my experience serving on multiple Minnesota Supreme Court rule-making committees. When the federal permanency

laws governing child protection were passed, the Minnesota Supreme Court formed a committee to draft self-contained rules governing child-protection matters consistent with new federal deadlines. Previously, the juvenile-protection rules were codified along with the juvenile-delinquency rules. I served on that committee. It was a huge undertaking, and there were opposing views from multiple stakeholders at every step of the process. Yet, the work was completed in a timely fashion with monthly meetings. Similarly, the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure embarked on a complete revision of the rules and completed its work in a timely fashion. Like those rule-making bodies, the members of the Commission have a wide range of practical experience related to application of the guidelines. Thus, the Commission is perfectly capable of identifying ways to simplify the guidelines and completing the preliminary work necessary to devise a work plan for appropriate revisions.

In sum, more information is needed—both by the Commissioners and the Legislature—before a proposal to fund a comprehensive review and rewrite of the Minnesota Sentencing Guidelines is passed.

Michelle A. Larkin  
Judge, Minnesota Court of Appeals  
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