

## Approved Meeting Minutes

**April 8, 2021**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on April 8, 2021. 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 March 31, 2021.

Present electronically were Commission Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada, and members Captain Brooke Blakey, Justice (Ret.) Christopher Dietzen, Abby Honold, Kyra Ladd, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commissioner of Corrections Paul Schnell. Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Kathleen Madland, Linda McBrayer, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically were Richard Frase, Professor at the University of Minnesota Law School; Kim Gorzycki; Matt Majovski, Dakota County Community Corrections; Christopher Uggan; Julie Risser; and Paulette Orlicki.

### 1. Call to Order & Roll Call

Chair Mitchell called the meeting to order at 1:00 p.m.

Chair Mitchell explained that the meeting was being held by telephone and Internet as authorized by statute, which applied because an in-person meeting was not practical or prudent due to the health pandemic and peacetime emergency.

Chair Mitchell asked Director Reitz to call the roll.

Present electronically were Commission Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada, and members Captain Brooke Blakey, Justice (Ret.) Christopher Dietzen, Abby Honold, Kyra Ladd, Judge Kevin Mark, Cathryn Middlebrook, and Paul Schnell. Nine members were present; two members were absent. A quorum was present.

### 2. Approval of Agenda

This was on the agenda as an action item.

**Motion** by Commissioner Dietzen and second by Commissioner Mark to approve the meeting agenda.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and members Commissioners Blakey, Dietzen, Honold, Ladd, Mark, and Middlebrook, and Schnell.

### **3. Approval of Draft Meeting Minutes**

This was on the agenda as an action item.

**Motion** by Commissioner Schnell and second by Commissioner Middlebrook to approve the meeting minutes from March 11, 2021.

**Motion carried** on an 8-0 roll-call vote.

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and members Commissioners Blakey, Dietzen, Ladd, Mark, and Middlebrook, and Schnell. Commissioner Honold abstained.

### **4. The Effect of Criminal History Scores on Racial Disproportionality in Prison – Prof. Richard Frase**

This was on the agenda as a discussion item.

Chair Mitchell welcomed to the Commission Richard Frase, Professor at the University of Minnesota Law School, Benjamin N. Berger Professor of Criminal Law; Board of Directors, Robina Institute of Criminal Law & Criminal Justice; Founder and Co-Director, Robina Sentencing Guidelines Resource Center, Robina Criminal History Enhancements Project and co-author of the book, *Paying for the Past*.

Staff noted that, prior to the meeting, Commission members were provided Chapter 7 of the copyrighted book, *Paying for the Past*, by the permission of the author. This material is not being made available to the public, as doing so would violate copyright law. The publisher's synopsis of the chapter was provided on the Commission's website instead. Members of the public were told that they may contact MSGC staff with questions on how to purchase the book or examine the chapter.

Professor Frase presented slides on “The Effect of Criminal History Score on Racial Disproportionality in Prison” saying that sentencing enhancements based on a person's prior criminal history are a major contributor to racial disproportionalities in prison populations because racial minorities are more likely to have criminal history.

Prof. Frase presented data on the black-to-white incarceration-rates in 2014 by state (noting that Minnesota's black-to-white incarceration-rate is the fourth highest in the United States and highest among guidelines states at 11:1 compared to the total United States at 5:1); black-to-white rates at key stages (felony conviction, recommended prison, executed prison, and prison population); and proportions of black-to-white disparity by “grid zones.” Prof. Frase also presented data on disparities in the community and at major stages of the criminal process.

The time was 1:23 p.m., and Commissioner Larkin had joined the meeting.

Professor Frase concluded by offering four proposals that may affect outcomes: 1) Eliminate or de-emphasize components of the criminal history score that have strongly disparate racial impacts (i.e., a

racial impact audit/statement); 2) Reduce the proportion of offenders who are recommended for prison terms solely because of their elevated criminal history scores (reduce number of people in “zone 2”); 3) Reduce the degree to which criminal history increases the duration of recommended prison terms (i.e., flatten the CHS curve); 4) Discourage judges from giving an offender’s elevated criminal history score a major role in guidelines departures decisions.

The Commission asked questions and discussed the item.

Chair Mitchell thanked Prof. Frase and reminded the Commission that Dr. Julia Laskorunsky, Research Fellow, Robina Institute of Criminal Law and Criminal Justice presented the Robina Institute’s Recidivism study before the Commission (December 14, 2017) and this could be redistributed if that would be helpful.

## **5. A Closer Look at Sentencing Departures – Staff Presentation**

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who presented “A Closer Look at Sentencing Departures” in response to some of the questions asked at the Commission’s March 2021 meeting. Director Reitz presented slides on presumptive and actual prison rates by area of the grid; a closer look at mitigated dispositional departure rates for selected offenses such as second-degree assault, felony DWI, second-degree burglary, failure to register as a predatory offender, and first-degree controlled substance offenses; and low frequency offenses with high departure rates.

The Commission discussed the presentation and asked questions.

Chair Mitchell said she would be interested in reviewing durational departures for mandatory minimum offenses to see if the departure was a departure from the mandatory minimum to the presumptive duration or a departure from the presumptive sentence to the mandatory minimum.

## **6. Partial Points in Criminal History Update**

This was on the agenda as a discussion item.

### **A. Staff Memo Distribution & Reaction**

Chair Mitchell called on Director Reitz who said that the staff memo was sent through channels to probation supervisors, district court judges, county attorneys and public defenders on Friday, March 19, 2021. Director Reitz explained that the memo was updated to include suggestions from Vice-Chair Estrada recognizing the existence of juvenile points and misdemeanor/gross misdemeanor points. Director Reitz called on Management Analysis Specialist Linda McBrayer who fields questions from probation officers on this issue and that there has been some feedback from probation agents indicating that they are still confused and sometimes asked to give an opinion on the issue rather than simply relaying the information.

## B. Working Group Update

Chair Mitchell said that the working group is composed of herself, Vice-Chair Estrada, and Commissioners Ladd and Larkin, and they have met twice to come up with potential solutions without introducing more problems. Commissioner Larkin said that there have been many great ideas and they are committed to thinking in an entirely different way.

## 7. Technical Correction – Conditional Release Reference in the Guidelines

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz who explained a technical error in a statutory reference in the Guidelines that needed correcting, and that staff brought it for a first reading in March and brought it back today for action.

**Motion** by Commissioner Larkin and second by Commissioner Middlebrook to modify 2020 Minn. Sentencing Guidelines section 2.E.3 to correct the reference as described, below.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and members Commissioners Blakey, Honold, Ladd, Larkin, Mark, and Middlebrook, and Schnell.

Chair Mitchell noted that Commissioner Dietzen, who was absent from this part of the meeting due to a schedule conflict, had previously told Chair Mitchell that he was in agreement with the modification.

*Proposed modifications to 2020 Minn. Sentencing Guidelines § 2.E.3:*

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3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a~~(e)~~~~(d)~~.
- First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
- Child pornography. Minn. Stat. § 617.247, subd. 9.

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## **8. Dept. of Corrections Legislative Proposal – Minnesota Rehabilitation and Reinvestment Act**

This was on the agenda as a discussion item.

Chair Mitchell called on Commissioner Schnell who shared a presentation on the Minnesota Rehabilitation and Reinvestment Act (MRRRA/HF2349-House Omnibus Bill) and its four components:

- Individualized Rehabilitation Plan (IRP). Each person will receive a robust assessment that is used to set concrete, personalized rehabilitation goals including mandated input from the victim.
- Earned Release. People can earn earlier release by participating in rehabilitation prescribed by their Plan. Example activities include substance abuse treatment, mental health counseling, vocational skills training and education.
- Earned Supervision Abatement. Once released, people can again earn a shortened period of community supervision, known as Supervision Abatement, by meeting goals of a personalized plan. Examples of these tailored goals include maintaining employment, chemical health aftercare programming and mental health follow-up counseling, and positive family and community reintegration.
- Justice Reinvestment Fund. Savings will be reinvested equally across four areas: victim support services; strategic investments in crime prevention and intervention initiatives; reinvestment in community-based correctional programs; and the state general fund.

The Commission discussed this item and members asked questions of Commissioner Schnell.

## **9. Legislative Update**

Director Reitz referred the Commission to the Staff Information Paper entitled, “Proposed Omnibus Public Safety Bills” highlighting parts of the House and Senate omnibus public safety bills, as proposed by the respective chairs of the House and Senate public safety committees, that staff considers likely to be of greatest interest to the Commission. Director Reitz pointed out items that are highlighted because they were agreed upon including a new MSGC research position and guidelines implications for possible changes to criminal sexual conduct laws, sex trafficking, and sexual solicitation of children. Director Reitz noted that the bills were subject to change before approval by the respective committees.

## **10. Executive Director Report**

Director Reitz reported on the following items.

- Staff has been told to expect a return to in-person work in July with quite a bit more flexibility on teleworking even post-COVID.

- Still no word on in-person meeting rooms. Meetings continue to be held by telephone and Internet as authorized by Minn. Stat. § 13D.021, which has applied because in-person meetings have not been not practical, prudent, or feasible due to the health pandemic and peacetime emergency. The situation may change this summer. Staff will update the Commission when more information becomes available.

## **11. Public Input**

Chair Mitchell asked if any member of the public present wished to speak. Three members asked to be recognized.

Julie Risser thanked the Commission for the opportunity to speak saying they would like the Commission to consider the increased dangers presented by heavy pickup trucks especially to pedestrians and passenger and drivers of smaller cars. Ms. Risser asked that the Commission consider this as it makes decisions related to such things as reckless driving offenses. Ms. Risser pointed to a recent Bloomberg article on this issue.

Paulette Orlicki said she attended a few Commission meetings earlier in the year but was unable recently due to work conflicts. Ms. Orlicki said she had sent an e-mail to the Commission on Jan 5, 2021, regarding criminal vehicular homicide comparing Minnesota's sentences to neighboring states. Ms. Orlicki said that Minnesota's sentencing guidelines are much lower (4 years) compared to neighboring states where the sentences are 15 and 25 years. Ms. Orlicki said that the last time she attended a meeting, the Commission had talked about making this issue a priority and wanted an update. Chair Mitchell said that the Commission had met about the issue of criminal vehicular homicide earlier this year and planned on addressing it as one of the high-departure offenses. Chair Mitchell said that staff would reach out to her to get her the information.

Matt Majovski, a Dakota County Probation Officer, thanked the Commission and staff and asked when it might resolve the partial points in criminal history issue. Chair Mitchell said that the working group is working as quickly as possible but that due to the statutory timeline for amending the guidelines, any change would not go into effect until August of next year.

## **12. Adjournment**

The meeting adjourned at 3:39 p.m., without objection.