

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**April 16, 2015**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on April 16, 2015 in Room 220, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155. Commission members present were Chair Jeffrey Edblad, Vice-Chair Justice Christopher Dietzen, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, and Judge Heidi Schellhas. MSGC staff members present were Executive Director Nate Reitz, and staff members Mike Jones, Anne Wall, and Jill Payne. Assistant Attorney General Jim Early was present.

Members of the public present were Karen Chung, Carl Reynolds, and Ellen Whelan-Wuest, Council of State Governments Justice Center; Professor Richard Frase, Rhys Hester, and Kelly Mitchell, University of Minnesota Law School, Robina Institute of Criminal Law and Criminal Justice, and Lisa Netzer, MN Department of Corrections.

### **Workshop**

A pre-meeting workshop, open to the public, was held before the meeting from 1:30-2:00 p.m. Professor Richard Frase, Rhys Hester, and Kelly Mitchell from the Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School, presented portions of their forthcoming Criminal History Enhancements Sourcebook to the Commission for its feedback. No votes or official action were taken during the workshop.

### **Meeting**

#### **1. Call to Order**

The Chair called the meeting to order at 2:01 p.m.

#### **2. Approval of Agenda**

This was on the agenda as an action item.

**Motion** made by Judge Lennon and seconded by Justice Dietzen to approve the agenda.

**Motion carried.**

### 3. Approval of Meeting Minutes

This was on the agenda as an action item.

**Motion** made by Justice Dietzen and seconded by Commissioner Roy to approve the meeting minutes from March 19, 2015.

**Motion carried.**

### 4. Reasons for Departure in the Guidelines

These items were on the agenda as possible action items. The Chair called on the Executive Director to explain each item related to departures.

#### a. Defendant's Request for Execution as Departure

Executive Director Reitz directed the Commission to the relevant materials: *Defendant's Request for Execution as Departure*. The item was on the agenda on March 19, 2015 at which time the Commission directed staff to redraft draft modification language related to an offender's right to demand an executed sentence.

**Motion** to approve modification language as presented for public hearing consideration made by Commission of Corrections Roy and seconded by Sgt. Ford.

A discussion ensued.

**Motion amended** to approve the following modification language for public hearing consideration made by Commission of Corrections Roy and seconded by Sgt. Ford.

**Motion carried.**

#### D. Departures from the Guidelines

\* \* \*

x. Offender's Demand for Execution. A sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.

\* \* \*

*2.D.10x. An offender generally has the right to demand execution of sentence. State v. Rasinski, 472 N.W.2d 645, 651 (Minn. 1991); see also Minn. Stat. § 609.135, subd. 7.*

The Commission does not regard the execution of a presumptively stayed sentence as a departure from the Guidelines if the record, or the Court's communication to the Commission, reflects that the sentence was executed upon the offender's peremptory demand.

\* \* \*

**3.A.202.** While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states ~~that~~ when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration. \* \* \* \*

#### **b. Factors not to be used as reasons for departure**

Executive Director Reitz directed the Commission to the relevant materials: *Impermissible Departure Reasons*. The item was on the agenda on March 19, 2015 at which time the Commission tabled any action with respect to the list of factors not to be used for departure (Section 2.D.2).

The Commission discussed whether the list of factors not to be used for departure should be modified.

**Motion** to table the issue made by Commissioner Roy and seconded by Judge Schellhas.

The Commission directed staff to redraft Section 2.D.2.b and contact the Commissioner of Human Rights regarding Section 2.D.2.a, for acceptable language in accordance with Minn. Stat. Ch. 363A.

**Motion carried.**

#### **c. Review of departure report form**

Executive Director Reitz directed the Commission to the redrafted departure report form and explained that the form had been revised based on feedback received at the March Commission meeting. The Commission suggested further revisions to

page 2 of the form to make it clearer which reasons were sanctioned and which were not.

## 5. Racial Impact Screening

This was on the agenda as a possible action item. The Chair called on the Executive Director to explain the issue before the Commission. Executive Director Reitz directed the Commission to a letter to the Commission Chair dated April 9, 2015, explaining the agency's racial impact statement policy. Mr. Reitz explained that the purpose of a racial impact screening is to allow legislators to evaluate, and possibly ameliorate, racial disparities that would be exacerbated by policies within significant crime bills, and to appreciate when existing racial disparities would be alleviated by policies within significant crime bills, and described the agency's criteria for conducting racial impact screening.

**Resolved** that the Commission supports its staff's continued practice of preparing racial impact statements for the legislature, as moved by Commissioner Roy and seconded by Justice Dietzen.

**Motion carried.**

## 6. Ranges in the Shaded Areas of the Grids

This was on the agenda as a possible action item. Executive Director Reitz directed the Commission to the relevant materials: *Ranges in Shaded Areas of the Grids*. Director Reitz explained that the issue was that the Guidelines are ambiguous as to whether upper and lower ranges apply only to presumptive commitments, or if they apply to both presumptive commitments and presumptive stayed sentences.

**Motion** to table the issue made by Commissioner Roy and seconded by Judge Lennon.

**Motion carried.**

## 7. Executive Director's Report

The Executive Director explained that the Commission's May meeting would be dedicated to considering and ranking crime legislation and that the June meeting would focus on planning and new-member orientation.

## **8. Public Input**

The Chair recognized members of the public. No one cared to speak.

## **9. Adjournment**

**Motion** to adjourn made by Justice Dietzen and seconded by Cathryn Middlebrook.

**Motion carried.**

The meeting adjourned at 3:33 p.m.