

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
February 19, 2015

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on February 19, 2015 at the Minnesota Judicial Center; 25 Rev. Dr. Martin Luther King Jr. Blvd.; St. Paul, MN 55155; Room G-31. Commission members present were Chair Jeffrey Edblad, Jason Anderson, Sergeant Paul Ford, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, Judge Heidi Schellhas, and Yamy Vang. MSGC staff members present were Executive Director Nate Reitz, and staff members Mike Jones, Kathleen Madland, Linda McBrayer, Anne Wall, and Jill Payne. Assistant Attorney General Jim Early was present. A member of the public, Bill Lemons from the Minnesota County Attorneys Association was also present.

1. Call to Order

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

2. Approval of Agenda

Motion made by Sgt. Ford and seconded by Ms. Vang to approve the agenda.

Motion carried.

3. Approval of Meeting Minutes

a. November 20, 2014

Motion made by Sgt. Ford and seconded by Judge Schellhas to approve the November 20, 2014, meeting minutes.

Motion carried.

b. December 18, 2014

Motion made by Mr. Anderson and seconded by Sgt. Ford to approve the December 18, 2014, meeting minutes.

Motion carried.

4. New Employee Introduction – Mike Jones

The Chair called on Executive Director Reitz who introduced the newest member of the staff: Mike Jones is an Office and Administrative Specialist who began work with the agency in mid-January 2015.

5. Presentation of Employee Achievement Awards

The Chair called on Executive Director Reitz who explained that the agency awarded two achievement awards based on employee achievement in the third quarter of fiscal year 2015. Executive Director Reitz presented Jill Payne and Linda McBrayer with a team achievement award for exemplary and outstanding project accomplishment for their work on the creation and rollout of the new Electronic Worksheet System. Ms. Payne and Ms. McBrayer were present to accept their award. Executive Director Reitz also presented an individual award to Kathleen Madland for exemplary and outstanding innovation for undertaking the task of redesigning and maintaining the Minnesota Sentencing Guidelines Commission website and other innovative ways of making information accessible to the public. Ms. Madland was present to accept her award.

6. Reasons for Departure in the Guidelines

The Chair called on the Executive Director to explain the issue before the Commission. Executive Director Reitz directed the Commission to the relevant materials: *Departure Reasons Listed in the Guidelines*. He explained that the list of departure factors in the Guidelines is shorter and different than the factors most frequently articulated by sentencing courts.

The Commission discussed whether it wished to amend its nonexclusive list of factors that may be used for departure and whether it objected to suggested staff changes to the departure checklist.

Motion to amend the departure report checklist to address relevant caselaw and statutory recodifications made by Judge Schellhas and seconded by Commissioner of Corrections Roy.

Motion carried.

7. Stays of Adjudication and Dispositional Departures

The Chair called on the Executive Director to explain the issue before the Commission. Executive Director Reitz directed the Commission to the relevant materials: *Stays of*

Adjudication and Aggravated Dispositional Departures. He explained that some practitioners are unaware that it is an aggravated dispositional departure to execute, immediately upon revocation of a stay of adjudication, an otherwise presumptively stayed sentence. It is a departure regardless of the number of previous attempts by the court to restructure the stay of adjudication before revocation. Guidelines staff contacted 10 judges in its last quarterly departure request cycle who were unaware that they had departed. Staff presented the Commission with possible Guidelines modifications to Section 2.

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

* * *

C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. * * *

2.C.10. Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.

* * *

D. Departures from the Guidelines

1. Departures in General. The sentences ~~ranges~~ provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a ~~departuresentence outside the appropriate range on the applicable Grid.~~

* * *

- e. Revoked Stay of Adjudication. When a felony stay of adjudication is vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentence pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.

* * *

2.D.106. *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and Comment 2.C.10). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and “revocation of a stay of adjudication” will be noted as the reason for departure, unless the court offers another explanation.*

* * *

A discussion ensued.

Motion carried. 6 in favor; 1 opposed.

8. Minnesota Sex Offender Program Bill – Senate File 514, Art. 3

The Chair called on the Executive Director to explain the issue before the Commission. Executive Director Reitz directed the Commission to the relevant materials: *Minnesota Sex Offender Program; Indeterminate Sentencing for Certain Sex Offenders (Senate File 415, Art. 3)*. He explained that Senator Sheran requested the Commission review the indeterminate sentencing part of the bill to make it work without hurting the sentencing guidelines structure.

Motion to respond to Senator Sheran’s request with proposed language made by Judge Schellhas and seconded by Ms. Vang.

In the course of the ensuing discussion, friendly amendments were made to the motion, resulting in the final motion containing the following language:

On February 19, 2015, at your request, the Minnesota Sentencing Guidelines Commission reviewed the sentencing policy changes proposed within Article 3 of Senate File No. 415, 89th Minnesota Legislature, as introduced.

The Commission continues to be concerned philosophically about the conflict between the Minnesota Sentencing Guidelines principles of uniformity, proportionality, and predictability on one hand, and the indeterminate sentencing aspects of Minn. Stat. § 609.3455 on the other. The Commission is further concerned about the implications of Article 3 expanding that statute’s indeterminate sentencing aspects.

Notwithstanding this concern, the Commission acknowledges that Article 3 is drafted in a manner that incorporates Guidelines principles by including a fixed, Guidelines-based minimum term of imprisonment for repeat sex offenders subject to mandatory indeterminate sentences, and by permitting departure from those mandatory penalties if permitted by the Guidelines. It is the sense of the Commission that, despite the indeterminate nature of its

proposed criminal sanctions, Article 3, if enacted, would not materially harm the continued successful application of Sentencing Guidelines within the State of Minnesota.

Motion carried.

9. Executive Director's Report

The Executive Director explained that the agency had been responding to a number of fiscal note requests from the legislature. He explained that a bill requiring the Commission to perform racial impact screenings had been introduced into the Senate as Senate File 769. There was also a parole board bill introduced in the Senate as Senate File 274. The director said that he would continue to monitor the progress of these bills and report back to the Commission.

The Executive Director explained that Ellen Whelan-Wuest, a Justice Reinvestment Project Manager with the Council of State Governments, would be visiting Minnesota next month and would like to meet informally with a few members of the Commission if possible. It was also reported that new appointments to the Commission are still pending.

10. Public Input

The Chair recognized that a member of the public had been present during the meeting.

11. Outgoing Commission-Member Recognition

The Chair presented outgoing member Jason Anderson with a certificate of recognition for his contribution to the mission of promoting public safety and the public good by establishing rational, consistent, and equitable sentencing standards in the State of Minnesota through his selfless service as a probation officer member.

12. Adjournment

Motion to adjourn made by Commissioner of Corrections Roy and seconded by Ms. Vang.

Motion carried.

The meeting adjourned at 4:00 p.m.