

## Draft Meeting Minutes

June 9, 2022

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 9, 2022, in the Afton Room at the Department of Corrections, 1450 Energy Park Drive, Saint Paul, MN 55108; and by telephone and/or electronically.

Present in person were Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada and members Judge David Knutson, Cathryn Middlebrook, Kyra Ladd, Justice Gordon L. Moore, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff members Shanna Mohabir and Jill Payne were also present, as were guest speakers Dr. Chris Uggen, Professor of Sociology & Law, University of Minnesota and Hannah Schwendeman, Sociology Ph.D. Student, University of Minnesota. No other members of the public were present in person.

Present by telephone and/or electronically were members Tonja Honsey and Judge Michelle Larkin, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on May 13, 2022. Also present by telephone and/or electronically were MSGC staff members Linda McBrayer and Anne Wall, and ten members of the public including Robert Small, Ben Johnson, Sophie Traynor, John Hultquist, Ami Schlichtmann, Matt Majovski, Maurice Ward, Candice Mohs, Elizabeth Ruhland, and Kelly Janssen.

### 1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:07 p.m.

Director Reitz called the roll. Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Middlebrook, Moore, and Morath. Eight members were present.

Commissioners Schnell and Larkin were absent. One position was vacant. A quorum was present.

### 2. Approval of Agenda (Action)

This was on the agenda as an action item.

**Motion** by Commissioner Middlebrook and second by Commissioner Moore to approve the meeting agenda.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Middlebrook, Moore, and Morath.

### 3. Approval of Draft Meeting Minutes from May 12, 2022 (Action)

This was on the agenda as an action item.

**Motion** by Commissioner Vice-Chair Estrada and second by Commissioner Knutson to approve the meeting minutes from May 12, 2022.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Middlebrook, Moore, and Morath.

### 4. Neutrality Review Update (Discussion)

This was on the agenda as a discussion item.

Dr. Chris Uggen, Regents Professor of Sociology & Law, University of Minnesota and Hannah Schwendeman Sociology Ph.D. Student, University of Minnesota presented slides entitled “Minnesota Sentencing Guidelines Commission Neutrality Update” dated June 9, 2022.

Dr. Uggen stated the goals and rationale for the presentation and continued by presenting the two research questions “What are the current levels of disparity, considering race, sex, and geography?” and “How have these disparities changed over the last 20 years?”

At 1:33 p.m., during the presentation, Commissioner Schnell joined the meeting in person and Commissioner Larkin joined the meeting online.

Dr. Uggen and Hannah Schwendeman presented their research, which showed that Black, Hispanic, American Indian, and Asian Minnesotans were more likely to receive a prison sentence than Whites (2015-2019) and were more likely to receive longer prison sentences. Dr. Uggen presented slide 19 which showed that criminal history scores were higher for Black and American Indian Minnesotans than for any other groups (2001-2019) but the average criminal history scores had risen from 1.6 to 2.2 for all racial groups in the past 20 years; it also showed that a higher percentage of Black and American Indian Minnesotans were subject to a felony and custody status point (2015-2019), their data also showed that criminal history scores overall have risen across the state. Dr. Uggen noted that the average age of people sentenced for felonies had increased by 5-year where almost half were under 25 years old in 2001, less than one-fourth were under 25 years old in recent data.

Chair Mitchell thanked Professor Uggen and Hannah Schwendeman for presenting and the Commission asked questions and discussed the findings in the presentation.

### 5. 2022 Legislative Activity

Director Reitz explained that agenda items 5, 7 and 8 were all related and dependent on each other; therefore, it may be necessary to discuss them together and out of order.

## A. Regular Session Laws Related to Sentencing (Action)

This was on the agenda as an action item.

Director Reitz first presented section A of “Laws Related to Sentencing” dated June 6, 2022, saying that MSGC staff will be converted to classified service effective July 1, 2022; and that there were changes to Minnesota’s code of Military Justice. Director Reitz said that neither of these changes would affect the Sentencing Guidelines.

Director Reitz presented section B related to competency restoration reform, reminding the Commission that Commissioner Middlebrook represented the Sentencing Guidelines Commission on the Community Competency Restoration Task Force. The provisions directly affecting criminal procedure and sentencing related to those found to be incompetent will take effect July 1, 2023. Director Reitz said that the change most directly affected the Sentencing Guidelines (section 3.C.01) related to jail credit. Due to the late effective date, the Commission discussed the item and decided to defer action until next year.

## B. Special Session Contingencies

Director Reitz said that he is unsure if there would be a special session this year. Chair Mitchell said that the Commission does not know any more than they did previously if there will be a special session and noted that, even if a special session called were tomorrow, the Commission’s rules would require an approximately 45-to 60-day process for putting changes into the Guidelines.

The Commission next moved on to discuss item 8, as it was relevant to the discussion in item 5C.

## 8. Possible Technical Modifications to the 2021 Sentencing Guidelines and Commentary (Action)

This was on the agenda as an action item.

Director Reitz presented “Listing Sexual Extortion as a Conditional-Release Offense” dated May 29, 2022, saying that, when the 2021 Legislature required conditional release for those released from prison for Sexual Extortion (Minn. Stat. § 609.3458), the offense was not listed in Guidelines section 2.E.3 (“Conditional Release”). Staff recommended correcting the omission. Commissioners asked questions and discussed how they would like to proceed with the changes given that there were no new crimes during the regular session for the Commission to rank.

**Motion** by Commissioner Schnell and second by Commissioner Vice Chair Estrada to amend the section 2.E.3 of the Minnesota Sentencing Guidelines and Commentary to list Sexual Extortion as a conditional release offense, as set forth below:

[2.E.]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).
- First- through fourth-degree criminal sexual conduct, **sexual extortion**, and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. ~~6-8~~, **6-8**.
- Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
- Child pornography. Minn. Stat. § 617.247, subd. 9.

**Motion carried** unanimously on a 10–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

The Commission went back to discuss agenda item 5C.

### **5.C. Whether to Hold a July Public Hearing**

Chair Mitchell discussed the practicality of holding a July public hearing given that there were no new crime laws to rank. The consensus of the Commission was that there was not enough material to hold a public hearing so the Commission would hold the items until the next public hearing (which would most likely be in December of 2022).

## **6. Continuation of Sex Trafficking & Prostitution Review (Discussion)**

This was on the agenda as a discussion item.

Director Reitz presented staff paper 6A, “Case Law Regarding Sentencing Aggravated Sex Trafficking,” dated May 29, 2022, discussing a published Minn. Court of Appeals case and several unpublished Minn. Court of Appeals cases on the topic. Director Reitz and Anne Wall presented staff paper 6B, “Additional Sentencing Data – Aggravated Sex Trafficking,” dated June 6, 2022. Chair Mitchell said that when the Legislature created this new offense the Commission could have either continued with the modifier or rank it individually. The Commission discussed the differences in sentences if the offense were kept as a modifier versus Ranking it. Chair Mitchell asked that if Commission members were interested in getting help drafting a proposal to let staff know by October in order to see it twice and vote on it the second time to get this item in a December public

hearing. Chair Mitchell asked if there was anything else the Commission needed to know about Sex Trafficking before moving on to discussing prostitution at the next meeting.

## **7. Custody-Status Round Table Planning (Discussion)**

The Commission discussed the location for the roundtable meeting debating between the Minn. Judicial Center and Afton Room at the Department of Corrections.

### **A. Invitation**

Director Reitz presented the “Revised Roundtable Invitation” dated June 2, 2022, saying that the meeting will be held at the Minnesota Judicial Center in Room 230 on July 21, 2022. A Commissioner suggested that the invite should be extended to the Minnesota Association of Criminal Defense Lawyers rather than Minnesota State Bar Association. Additionally, the Commission determined that if Commissioner Knutson was available on July 21, there would be no need to ask for another representative from the District Court. The Commission discussed that, because the Commission had a vacant peace officer position, the law enforcement representative could be either Commander Omari or Paul Ford since they were former commissioners and were, therefore, aware of issues. A Commissioner suggested inviting Minnesota Association of Community Correction Act Counties (MACCAC) President Catherine Johnson for the probation representative because they could speak to risk assessment and felony probation.

### **B. Determining the Date- July 21 or 28**

Chair Mitchell suggested that the Roundtable meeting could take place on July 21, 2022, in place of the scheduled public hearing and that a brief Commission meeting could then occur on July 28, 2022, to debrief what occurred at the Roundtable. Chair Mitchell then reviewed the agenda for the roundtable meeting.

There were no objections.

## **9. Possible Amendments to the Commission's Demographic Impact Statement Policy (Action)**

This was on the agenda as an action item.

Chair Mitchell said that this would be put on the next agenda due to time limitations.

## **10. Executive Director's Report (Discussion)**

Director Reitz reported that he sent out invitations to commission members for NASC (National Association of Sentencing Commissions), and that this year’s Richard Kern Award would be awarded to Chair Kelly Mitchell. Director Reitz reported that, of the four elected members of the commission, three were up for election in 2022 and all were unopposed. Director Reitz congratulated commissioners Ladd, Larkin, and Moore.

## **11. Public Input**

This was on the agenda as a discussion item.

Chair Mitchell asked if there were any members of the public present who wished to speak.

No one asked to be recognized.

## **12. Adjournment**

Chair Mitchell adjourned the meeting at 3:44 p.m., without objection.