

Public Hearing Summary

July 20, 2023

The Minnesota Sentencing Guidelines Commission (MSGC) held a public hearing on July 20, 2023, in the Minnesota State Capitol Building, Room G3, 75 Dr. Martin Luther King, Jr. Blvd., St. Paul, MN 55155; and by telephone and/or electronically. This document is an MSGC staff summary of that public hearing.

[Minn. R. 3000.0500](#) provides that the record of a public hearing on proposed amendments to the Sentencing Guidelines will include the names of all persons who testified with respect to the proposed amendments, as well as the audio recording of the hearing. The names of those who testified at the hearing are listed on the following pages, and the audio and video recording of the hearing is available at the following link: https://www.youtube.com/watch?v=srQf_6u0zxY

Present in person were Commission Chair Kelly Lyn Mitchell and Commission members Judge Michelle A. Larkin, Judge David Knutson, and Cathryn Middlebrook. Also present were MSGC Executive Director Nate Reitz and Senior Research Analysis Specialist Jill Payne. Four members of the public were present in person: Michele Garnett McKenzie, David Zimmer, Kelly Janssen, and John Croman of KARE-TV.

Present by telephone and/or electronically were Commission members Kyra Ladd, Brooke Morath and Commissioner of Corrections Paul Schnell, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on June 20, 2023. Also present by telephone and/or electronically were MSGC staff members Kathleen Madland and Linda McBayer, and approximately 13 members of the public including Tim Burns of KSTP, Angela Cook, Elizabeth Ruhland, Leanne Walter, Matt Majovski, Paul Blume of Fox 9 News, Senator Judy Seeberger, Senator Warren Limmer, and Nicholas Murch.

A. Call to Order

At 1:04 p.m., Chair Mitchell called the public hearing to order and welcomed those in attendance.

B. Purpose of the Hearing

Chair Mitchell stated that the public hearing was being held to consider proposed modifications related to crimes created or amended by the Legislature during the 2023 Regular Legislative Session, with the proposed modifications described in section A (shown in Appendix 1 of the public hearing notice) to take effect August 1, 2023; and the proposed modifications described in section B (shown in Appendix 2 of the public hearing notice) to take effect August 1, 2025.

A complete copy of the proposed modifications was on the Commission’s website at mn.gov/sentencing-guidelines/meetings, and had been available on the website since June 20, 2023 (with a corrected version posted on July 7, 2023). The notice of the hearing was published in the State Register on June 20, 2023. Chair Mitchell further explained that there were some public-inspection copies available in the room, together with website access information.

C. Public Hearing Procedures

Chair Mitchell explained the procedures for the public hearing, as follows:

- Members of the public may make oral or written statements regarding the proposed modifications, and that they may address questions about the proposed modifications to the Commission, its staff, or witnesses, and, if members of the public make an oral statement, the Commission or its staff may ask questions of them.
- Members of the public who registered to testify prior to the hearing will be called first, in the order they registered.
- Member of the public who wished to testify about the proposed modifications who had not registered prior to the hearing must first register their name, address, telephone number, and the names of any individuals or associations that they represent in connection with the hearing.
- After everyone had testified, the public hearing will end. The Commission will hold the record open for five calendar days to accept additional written comments. The Commission will give due consideration to all written comments received within the five-day comment period, as well as all written comments received up until the public hearing.
- The Commission will meet on Thursday, July 27, 2023, at 1 p.m., to finally adopt or reject its proposals. That meeting will take place in the Afton Room at the Department of Corrections, 1450 Energy Park Drive, Saint Paul, MN 55108; and by with remote participation optional.

Six people signed up to testify in advance of the public hearing.

D. Public Testimony

1.	David Zimmer	Public Safety Policy Fellow, Center of the American Experiment	Spoke In Person	Link & Timestamp to Testimony: 6:50
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MSGC Staff Summary:

Mr. Zimmer urged the Commission to apply enhanced severity levels to carjacking, which he described as one of the most vexing safety issues of our time, above those applied to traditional robbery. He described some of the unusual aspects of community harm, terror, and trauma that may apply to carjacking; mitigated departures applicable to robbery; and action taken by the U.S. Attorney.

Commissioners asked Mr. Zimmer questions. While Mr. Zimmer acknowledged that the official message from the Legislature was to equate the severities of robbery and carjacking, he argued that a one-vote Senate margin of victory was not a mandate. Mr. Zimmer also argued that the recent explosion of carjacking incidents, as well as collateral damage to the public, also justified higher rankings.

2.	Michele Garnett McKenzie	Deputy Director, the Advocates for Human Rights	Spoke In Person	Link & Timestamp to Testimony: 28:22
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MSGC Staff Summary:

The Advocates for Human Rights had worked closely with the Legislature to [restructure](#) the labor trafficking laws, and supported the Commission’s proposal to rank the newly defined crime. Given the multilevel nature of those who benefit from labor trafficking, however, the Advocates were concerned about how the proposed rankings would affect lower-level operatives, and therefore cautioned against penalties beyond the initial MSGC staff recommendations. In great bodily harm and death cases, where the offense did not involve Assault in the First Degree or Murder in the Second Degree, the Advocates recommended respective rankings at severity levels 8 and 9, rather than at 9 and 10—consistent, for example, with criminal abuse of a vulnerable adult resulting in great bodily harm. The Advocates supported leaving the level 6 and level 7 offenses off the serious violent offenses list.

(Staff note: Ms. McKenzie’s [testimony](#) appeared to suggest that she incorrectly believed that the Commission’s proposal was to leave the severity level 7 offense off the Severe Violent Offense list.)

3.	Kelly Janssen	Concerned Citizen	Spoke In Person	Link & Timestamp to Testimony: 36:59
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MSGC Staff Summary:

Ms. Janssen expressed two concerns about resources that had been used in past Commission discussions. First, based on her own experience with victims, Ms. Janssen doubted the “[Crime Survivors Speak](#)” report’s claim that victims didn’t always want the highest sentence for their perpetrators and discovered that the report was funded by an entity that, Ms. Janssen said, had donated another entity that had bailed out dangerous people. Ms. Janssen cited a different study showing the lifelong impact of crime on victims. Ms. Janssen also doubted a claim that the recidivism rate was only 30 percent, and cited a different study showing a much higher recidivism rate.

Commissioner Morath said that the “Crime Survivors Speak” study was cited only by her, and not necessarily something used by the Commission as a whole, and agreed that biases should be taken into consideration.

4.	Senator Warren Limmer	Ranking Minority Member, Senate Judiciary Committee	Spoke Remotely	Link & Timestamp to Testimony: 43:59
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MSGC Staff Summary:

Senator Limmer recommended enhanced penalties for carjacking. He opined that carjacking was a serious crime, and more serious than robbery. The subsequent theft and travel of the stolen vehicle increased its severity. He recommended that the offense be considered a felony-level offense. Sen. Limmer commended his [carjacking proposal](#) for the Commission’s consideration, which established carjacking crimes like robbery crimes, but with higher statutory maximum penalties and with mandatory minimum penalties.

Commissioners asked Sen. Limmer questions. Sen. Limmer distinguished carjacking from robbery in two ways. First, carjacking involves a degree of travel with the stolen vehicle, possibly while panicked and at high speeds, causing a degree of danger to the public. Second, the victim’s dependency on a motor vehicle—particular for lower-income victims—causes a unique hardship when the vehicle is taken. The legislative intent of the enacted carjacking bill was discussed.

5.	Senator Judy Seeberger	Member, Senate Judiciary Committee	Spoke Remotely	Link & Timestamp to Testimony: 58:46
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MSGC Staff Summary:

Senator Seeberger, the author of the enacted carjacking bill, she thought it was important that the Legislature recognize the offense for what it is and call it what it is, and that was the legislative intent behind the bill. Sen. Seeberger said that the bill speaks for itself in terms of offense level and sentencing. Commissioners asked Sen. Seeberger questions. Sen. Seeberger said, even without penalty changes, there was inherent value in defining carjacking in Minnesota law, in sending the message that the Legislature is seeing the crime, and in allowing the tracking of carjacking-related data that may inform additional policy choices in the future.

6.	Matt Majovski	Dakota County Probation Officer, but speaking on his own behalf	Spoke Remotely	Link & Timestamp to Testimony: 1:06:22
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MSGC Staff Summary:

Mr. Majovski discussed the Commission’s proposal to change Guidelines 2.B.5 in light of the redefinition of a felony, suggesting that, if the Commission is going to require 366-day sentences in order for prior out-of-state felonies to be counted as felonies in criminal history, then the change to the example in Comment 2.B.502 is not necessary and perhaps inconsistent with the change in Guidelines 2.B.5.b.

7.	Nicholas Murch	Dakota County Probation Officer, but speaking on his own behalf	Spoke Remotely	Link & Timestamp to Testimony: 1:11:02
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MSGC Staff Summary:

Mr. Murch said he was bringing up the same issue as his coworker, Mr. Majovski. Mr. Murch pointed out that, in some cases, the conversion of a prior out-of-state offense to a gross misdemeanor unit from a half-point felony could actually result in a more severe penalty in some cases, due to the potential of a full misdemeanor point rather than half a felony point in some cases.

Staff confirmed that no one else wished to testify.

E. Adjournment

After determining that no one else wished to testify at the public hearing, Chair Mitchell stated that the record would remain open for five calendar days, through July 25, 2023, to receive additional written comments at sentencing.guidelines@state.mn.us.

Judge Larkin gave notice that she will be recommending a higher ranking for carjacking at next week’s meeting.

The Chair adjourned the public hearing at 2:23 PM, without objection.