

Approved Meeting Minutes

February 10, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held remotely by telephone and/or electronically on February 10, 2022. Due to the health pandemic and related building access restrictions, the Chair determined that it was not practical, prudent, or feasible for members of the Commission or the public to attend at the regular meeting location (Centennial Office Building in Saint Paul) in person; instead, Commission members and members of the public participated by telephone or by interactive technology (WebEx), the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on January 27, 2021.

Present electronically were Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada and members Officer Brooke Blakey, Tonja Honsey, Judge David Knutson, Kyra Ladd, Judge Michelle Larkin, Cathryn Middlebrook, Justice Gordon L. Moore, Brooke Morath, and Paul Schnell. Also present by telephone and/or electronically were MSGC Executive Director Nate Reitz and staff members Linda McBrayer, Kathleen Madland, Shanna Mohabir, Jill Payne and Anne Wall, and approximately 10 members of the public including Baylea Kannmacher, Elizabeth Ruhland, Jacqueline Williams, Jezebel Ristow, Latonya Reeves, Matt Majovski, Robert Small, William Glahn, and William Johnson.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:01 p.m.

Chair Mitchell asked Director Reitz to call the roll. Ten members responded to their names when called: Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. A quorum was present.

Commissioner Knutson was also present but unable to respond to the roll call because, unbeknownst to the Commission members, he was accessing the meeting as a member of the public at that time.

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 a 11–0 roll-call vote.

Voting “Yes” at the time of the roll call were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Commissioner Knutson, who was unable to respond to the roll-call vote when called upon, later asked that his vote be recorded as “Yes.”

3. Approval of Draft Meeting Minutes (Action)

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Vice-Chair Estrada to approve the meeting minutes from January 13, 2022.

Motion carried unanimously on a 11–0 roll-call vote.

Voting “Yes” at the time of the roll call were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Commissioner Knutson, who was unable to respond to the roll-call vote when called upon, later asked that his vote be recorded as “Yes.”

4. Governor’s Council on Justice Reinvestment (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell introduced Carl Reynolds, Senior Legal and Policy Advisor for the Council of State Governments. Mr. Reynolds discussed the findings of the Justice Reinvestment Initiative in Minnesota, presenting statewide data on probation supervision and the different delivery systems throughout the state. Mr. Reynolds reported the four recommendations to improve supervision practices across all three delivery stations in Minnesota as:

- Use one set of tools validated on the Minnesota population. Tools must be validated across gender, race, and ethnicity.
- Develop a formalized case planning process across the three systems.
- Create a statewide EBP coordinator, enhance statewide training, and support coaching and quality assurance staff in each system.
- Require evidence-based treatment approaches for clients in the criminal justice system being served by community providers.

At the conclusion of the presentation, the Commission asked questions about the budget, different levels of services that are provided, evidence-based practices, and the difference in county funding levels. Mr. Reynolds stated that he would send the Justice Reinvestment in Minnesota’s February 2022 Report to the Legislature to Director Reitz, who could distribute it to the Commission.

5. 2020 Sentencing Data Presentation (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz and MSGC staff to present the 2020 Sentencing Data presentation. Jill Payne, Director Reitz, and Anne Wall, reported on 2020 case volume, variations by demographic categories, incarceration rates, and departure rates.

Chair Mitchell thanked staff for the data presentation and asked the Commission if there were any questions. A member requested that this information should be shared with the district court judges if not done so already. There was a brief discussion between the Commission and staff about what caused the imprisonment rate duration to increase.

6. Sex Trafficking Review- Introduction (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz to present the Sex Trafficking Review introduction presentation. Director Reitz discussed the legislative mandate, Minn. Stat. §609.322, the statutory structure of Minn. Stat. § 609.322, the mandate’s legislative history, and the staff-recommended next steps for responding to the legislative mandate. Commissioner Middlebrook asked staff when the modifier for Solicitation or Promotion of Prostitution or Sex Trafficking under Minn. Stat. § 609.322, subd. 1(b), was incorporated into the Guidelines. Anne Wall responded saying she did not recall; however, it was added after the Sex Offender Grid went into effect in 2006.

At the conclusion of the presentation, Chair Mitchell asked if there were questions or feedback on the review and staff-recommended timeline. Some members expressed interest in including prostitution offenses not on the Sex Offender Grid as part of the review. Director Reitz asked about the timeline for reporting to the Legislature. Members discussed a July public hearing vs. a December public hearing and it was suggested that a December public hearing may be more realistic given the mandate. Chair Mitchell suggested the Commission wait to see how the project progresses in the next few months before it decides when to hold a public hearing. No one objected to the staff-suggested steps or timeline.

7. Custody-Status Policy Study – Policy Overview (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz to present the “Custody-Status Policy Study – Data and Policy Overview” presentation to the Commission. He informed the Commission that the current presentation will be an update of a previous presentation that MSGC staff had shown the Commission several years ago. Jill Payne, Director Reitz, and Anne Wall reported on presumptive prison demographics, different weights of custody status, changes to custody status point policy, and percentage with custody status point demographics. Anne Wall asked the Commission if they had any questions at the end of the presentation.

A lengthy discussion ensued in which several commissioners asked questions and spoke about the presentation and the larger question of what the Commission was trying to accomplish following the issuance of its January 15, 2022, interim guidance to criminal justice practitioners where it was decided

that a one-half custody status point shall be rounded down when determining the criminal history score. Several commissioners asked for information that may assist them as they move towards resolving the one-half custody status point problem: custody-status waiver data; recidivism data including “time to recidivism” and types of offenses committed when on custody status and whether there are correlations i.e., are these repeat sex offenses or repeat violent offenses; who is “subject to supervision”; and what would be the impact of either rounding up or rounding down a person’s criminal history score.

8. Executive Director’s Report (Discussion)

A. Requests for Departure Reports in Half Custody Status Point Cases

Director Reitz explained the departure request process and that, staff is determining how to handle requests for departure that were due to the one-half custody status point. Director Reitz asked Commissioners if they have any guidance for MSGC staff on how to handle these cases. Chair Mitchell stated that it would be best to track the actual events that occurred in court and find a way to request information from judges. Chair Mitchell also suggest that we communicate to the judges that we are not calling it departure, we are trying to understand the sentencing that occurred and what it was based on.

B. Demographic Impact Statements

Director Reitz reviewed the Commission’s Demographic Impact Statement (DIS) policy. Director Reitz informed the Commission that they have the right as a Commission to participate in the process. Director Reitz stated that, the existing DIS policy does not address distributing the DIS to the bill’s author—only the committee chairs—and he would like to distribute it to the author unless there were objections.

Motion by Commissioner Knutson and second by Commissioner Moore to provide the demographic impact statement to the chairs of both committees and ranking minority members and author of the bill.

Motion carried unanimously on an 11–0 roll-call vote.

C. Legislative Update

Director Reitz reviewed a few of the bills introduced so far this session in which MSGC staff has been requested to provide fiscal notes. There were two associated with amendments to Minn. Stat. § 609.11, which would make mandatory minimums for weapon offenses “non-waivable” rather than “soft mandatory.” Director Reitz explained that staff provided estimates indicating a need for over one thousand prison beds. Director Reitz also mentioned a bill introduced related to carjacking explaining that if a robbery of a car occurred then it would have a high statutory maximum penalty and non-waivable mandatory minimum. Director Reitz explained some of the assumptions made by MSGC staff because it is currently unknown how many robbery cases involve motor vehicles.

Director Reitz reported on two bills directly affecting MSGC: Senate File 2672 (Minnesota Sentencing Guidelines Commission Members; Senate Confirmation Authorization) and Senate File 2669 (Minnesota Sentencing Guidelines Commission employees transition to classified service authorization). Director Reitz reported that both bills have cleared two Senate committees: Judiciary and Public Safety Finance and Policy Committee; and State Government Finance and Policy and Elections Committee.

9. Public input

Chair Mitchell asked if members of the public present either by telephone and/or electronically wished to speak. One public member asked to speak.

William Johnson from Maple Grove expressed appreciation for how well thought out and organized the meeting was saying he enjoyed watching it. Mr. Johnson asked how he could access meeting information. Chair Mitchell thanked Mr. Johnson for attending the meeting and asked Director Reitz to provide information. Director Reitz responded saying that the meeting materials can be found on the MSGC website where members of the public could also find a link to the MSGC YouTube channel where videos of previous meetings were also available. Director Reitz also stated that today's meeting should be posted on the website by tomorrow.

Chair Mitchell asked if anyone else wished to speak. No one else asked to be recognized.

10. Adjournment

Before adjourning, Chair Mitchell recognized Commissioner Larkin who asked whether future meetings would be in-person, remote, or hybrid. Director Reitz responded saying that hybrid meetings have been conducted since July 2021, which requires 10-days' prior notice. Director Reitz also stated that Chair Mitchell and the Commission could choose to have hybrid meetings moving forward.

The Chair adjourned the meeting at 3:53 p.m., without objection.