

Approved Meeting Minutes

March 10, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on March 10, 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 Cathryn Middlebrook, Justice Gordon L. Moore, Paul Schnell, and MSGC Executive Director Nate Reitz and staff member Shanna Mohabir.

Present by telephone and/or electronically were Tonja Honsey, Judge David Knutson, Kyra Ladd, Judge Michelle Larkin, Brooke Morath, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on March 1, 2022. Also present by telephone and/or electronically were MSGC staff members Linda McBrayer, Kathleen Madland, Anne Wall, and approximately 9 members of the public including Michelle Hipsag, Candice Mohas, Maurice Ward, Kelly Janssen, Kristin Honon, Matti Adam, Jacqueline Williams, Matt Majovski, and Robert Small. No members of the public were present in person.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:03 p.m.

Chair Mitchell asked Director Reitz to call the roll. Before roll call, Director Reitz announced that former commissioner Brooke Blakey accepted an appointment as the director of the City of Saint Paul's new Office of Neighborhood Safety. Because that position is not a peace officer position, she is no longer eligible to serve in the peace officer position on the Commission. Ms. Blakey therefore resigned from the Commission effective Tuesday, March 8, 2022.

Director Reitz called the roll. Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Ten members were present. No members were absent. One position was vacant. A quorum was present.

2. Approval of Agenda

This was on the agenda as an action item.

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

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.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Commissioner Moore and second by Commissioner Knutson to approve the meeting minutes from February 10, 2022.

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.

4. Sex Trafficking Review- Current Sentencing Practices

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who presented item 4, “Sentencing Practices: Sex Trafficking and Prostitution Cases.” Director Reitz reported on Sex Trafficking cases sentenced from 2015 to 2020; Prostitution Offenses on the Standard Grid; Demographic Information on Sex Trafficking and Prostitution Offenses, and Prison Rates for Sex Trafficking and Prostitution Offenses; and Departure Rates for Sex Trafficking and Prostitution Offenses.

Chair Mitchell thanked staff for the data presentation and asked the Commission if there were any questions. A member asked to be reminded of the Legislative directive. Director Reitz said the mandate was to comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minn. Stat. § 609.322. Director Reitz said that some of the review took place last year when the Commission responded to the Legislature’s 2021 changes to sex offenses. Director Reitz further said that the bill’s proponents had an interest in the Commission treating aggravated sex trafficking more severely than it currently does.

Director Reitz suggested inviting a representative from the Stearns County Attorney’s Office to the Commission’s next meeting because they provided valuable testimony to the Legislature for its 2021 Sex Trafficking bill. A member suggested the Commission review aggravated sex trafficking cases to determine the following: What are the offenses in which the modifier applies? What are the sentence results? How does that number compare to the number that would result if the modifier were removed and the offense had the elevated ranking and not the enhancement? Another member requested information on mitigated and aggravated departures for sex trafficking and why those departures were given. Chair Mitchell summarizes the discussion by stating the main points: There is interest in having the people who proposed this idea to the Legislature come in and talk to the Commission about what they’re seeking with this legislation; the Commission would like to take a look at the effect of

considering ranking versus having the four-year enhancement; and the Commission would also like to look at the severe violent offense list and determine what offenses should be on that list.

5. Custody-Status Policy Study

This was on the agenda as a discussion item.

At 1:40 p.m., Director Reitz announced to in-person participants that there were technical difficulties and the room had lost connectivity with the remote participants. A short recess was taken. The technical issues were resolved and the meeting resumed at 1:42 p.m. Chair Mitchell thanked everyone for their patience.

A. Data Presentation: Who Receives Custody Status

Chair Mitchell called on Director Reitz who presented item 5A, “Who Receives Custody Status – Cases Sentenced in 2019.” Director Reitz reported on Custody Status by Sentencing Guidelines Grids and Severity Levels; and Custody Status Point by Offense Type.

B. General Discussion

Chair Mitchell thanked staff for the presentation, asked the Commission if there were any questions on the data, and said the data about who currently receives a custody status point was an important backdrop to the general philosophical discussion about what the Commission is trying to achieve with the custody status point. Chair Mitchell set out questions on the agenda to guide the discussion: What concerns or risks does custody status address? Are these concerns or risks the same in all cases? Are there any factors that would justify mitigating or aggravating custody status in some cases or situations? What other information would you like to see as the Commission continues to consider custody status?

The Commission discussed several issues including whether to retain the custody status point, wholly or in part; the rationale for eliminating it; concerns over recidivism as an appropriate consequence for people who commit felony crimes and for those who commit violent personal crimes; compliance with probation and supervision terms; how to make distinctions between otherwise equally situated people if not by custody status point; increasing the use of other sentencing methods (e.g., consecutive sentencing) to ensure appropriate sanctioning; imposing consequences for those who commit crimes while under some type of supervision; whether the custody status point is inherently double or triple punishment; whether the custody status point concept is a “one-size-fits-all” approach that may not best address behavioral change in people who suffer from addiction or mental health issues; access to treatment services and support around Minnesota and the disparities of resources; and how to possibly incorporate specific practices that have produced positive results like evidence-based practices, cognitive skills, and trauma-informed care.

Chair Mitchell commented that part of the reason for the Commission’s interim decision on January 13, 2022, was to take time to engage in a discussion and that the Commission may wish to think

about how to do that. Chair Mitchell gave two past examples of when this was done: a roundtable discussion about controlled substances; and the invitation to testify about the total criminal history score. Chair Mitchell asked whether there were specific information requests for the next meeting.

There was interest in the following: average change in the presumptive sentence (in months) given the custody status point; DWIs because such a large proportion were on CSP (61.8%); revocation rates; and for those in the stayed portion of the grid, the proportion who initially received stays of imposition versus stays of execution; revocations and the number of violation hearings before revocation; the custody status waiver and whether judges think this policy is working. There was also a suggestion to reconvene the small working group to make recommendations to the full Commission in order to expedite the process.

6. Demographic Impact Statement Policy

This was on the agenda as a discussion item.

Director Reitz reviewed the Commission's Demographic Impact Statement (DIS) policy. Chair Mitchell reminded members that it voted in February to add ranking minority leaders and the author of the bill to the distribution list, and that this was brought to the Commission's attention by Representative Pinto, who had authored a bill in which a DIS was prepared, but he did not receive a copy. Director Reitz suggested that, at a future meeting, staff will bring forward draft language to insert into the permanent policy if that was the will of the Commission. Director Reitz suggested including "chief author" rather than "author" because there may be multiple authors. Director Reitz also suggested adding vice-chair. Chair Mitchell stated that these changes should be permanent changes to the policy. Director Reitz further explained that staff has had to prioritize preparing fiscal notes over DISs this session because the Legislature had been very active; therefore, staff has lapsed in preparing them. The Commission emphasized the importance of the DIS and asked that this be a staff priority; deemphasizing some tasks in order to deliver on DISs. The Commission also asked staff to prominently publish DISs on its website in real-time versus after the session ended.

7. Governor's Council on Justice Reinvestment Update

This was on the agenda as a discussion item.

Chair Mitchell gave the Commission an update on the Governor's Council on Justice Reinvestment saying that the Council prioritized the recommendations from the working group report and then made recommendations to the Governor. Chair Mitchell said the Council had anticipated having its report published by now; regrettably that was not the case. Chair Mitchell said that it will be provided as soon as possible. Chair Mitchell gave an informal report on things that were of greatest concern to the Council: encouraging the Legislature to provide adequate funding for community supervision; establish an implementation committee; and adequate funding for mental health services.

8. Executive Director's Report

This was on the agenda as a discussion item.

A. Half Custody Status Point Electronic Worksheet System Update

Director Reitz thanked Commissioner Schnell’s MNIT staff for their help with updating the Statewide Supervision Portal and Electronic Worksheet System to incorporate its interim custody status policy changes, which were expected to be implemented by the end of the month.

B. Legislative Update

Director Reitz stated that MSGC staff had roughly three dozen bills in which it prepared fiscal notes. Director Reitz noted bills on carjacking; fleeing a peace officer in a motor vehicle; organized retail theft; amendments to Minn. Stat. § 609.11, which would make mandatory minimums for weapon offenses “non-waivable” rather than “soft mandatories;” aggravated departures for repeat violent offenders up to service of the entire pronounced sentence without supervised release; marijuana; and aiding and abetting felony murder. Director Reitz also updated the Commission about two “Commission-specific” Senate bills that are currently sitting on the Senate floor; one of which would require Senate confirmation of the Commission and the other would make MSGC staff positions (other than the director position) classified.

C. Meeting Location Update

Director Reitz reported that state buildings will be fully open to the public in April. The Commission discussed meeting again in the Afton Room at the Department of Corrections in April and meeting in the Lady Slipper room at the Centennial Office Building beginning in May.

9. Public Input

This was on the agenda as a discussion item.

Chair Mitchell asked if members of the public present wished to speak. One member asked to speak.

Michelle Hipsag, a victim, who was joining by telephone and/or electronically thanked the Commission for allowing the public to participate in the meeting and said that the meeting was informative stating that she would like to make a comment about eliminating the custody status point and thanked Commission members who spoke in opposition. Ms. Hipsag spoke about her grandson who was killed, and daughter who was injured, by a repeat offender. Ms. Hipsag continued by saying that her grandson was left to die on the road and her daughter suffered extensive psychological injuries. Ms. Hipsag told the Commission that repeat offenders will keep reoffending and to eliminate the custody status point would be insulting to the public and victims. Ms. Hipsag said that it is not an acceptable approach to handle this issue and was aware that there are programs that reduce recidivism but getting caught also deters people from reoffending. Ms. Hipsag said that eliminating the custody status point would put the public at risk and that she was not supportive of that at all. Chair Mitchell thanked Ms. Hipsag for providing that perspective.

Commissioner Larkin was asked to be recognized by Chair Mitchell. Commissioner Larkin spoke in favor of hybrid meetings because they offer more transparency and allow for more public participation in the meetings. Chair Mitchell thanked Commissioner Larkin for her comment and called on Director Reitz.

Director Reitz notified the Commission that he neglected to include March public comments in the meeting materials and apologized for the oversight. He offered to send them the following day and post them on the website with the March meeting materials. Chair Mitchell asked if anyone else wished to speak. No one else asked to be recognized.

10. Adjournment

The Chair adjourned the meeting at 3:36 p.m., without objection.