

Approved Meeting Minutes

May 12, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on May 12, 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 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. No members of the public were present in person.

Present by telephone and/or electronically were Vice-Chair Estrada, Tonja Honsey, and Judge Michelle Larkin, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on March 22, 2022. Also present by telephone and/or electronically were MSGC staff members Linda McBrayer, Kathleen Madland, Anne Wall, and four members of the public including Robert Small, Maurice Ward, Elizabeth Ruhland, and Michelle Hipsag.

1. Call to Order and Roll Call

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

Director Reitz called the roll. Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, and Morath. Nine members were present. Commissioner Schnell was 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 Moore and second by Commissioner Middlebrook to approve the meeting agenda.

Motion carried unanimously on a 9–0 roll-call vote.

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

3. Approval of Draft Meeting Minutes from April 14, 2022 (Action)

This was on the agenda as an action item.

Motion by Commissioner Knutson and second by Commissioner Moore to approve the meeting minutes from April 14, 2022.

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

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

4. Review of Sex Trafficking and Prostitution Offenses (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who presented item 4A, “CMHTTF Recommendations & Background Information,” dated May 5, 2022. Director Reitz reported on Central Minnesota Human Trafficking Task Force (CMHTTF) Recommendations, Offense Descriptions, Overview of Offense Severity Rankings and History of Offenses on the Sex Offender Grid. Director Reitz explained that as the Commission considers Guideline modifications, its enabling legislation (Minn. Stat. § 244.09, subd. 5) gives the following directions: “In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.”

At 1:27 p.m., Chair Mitchell announced that Commissioner Schnell had joined the meeting in person.

Director Reitz presented item 4B, “Ranking Aggravated Sex Trafficking,” dated May 4, 2022. Director Reitz displayed the presumptive sentences for first- and second-degree sex trafficking drawing attention to “Figure 2. Presumptive Sentences for Second Degree Sex Trafficking: Not Aggravated; Aggravated, Under the Current Guidelines Modifier; If Aggravated Were Ranked at SL B; and If Aggravated Were Ranked at SL A.”

Director Reitz explained the staff recommendations to the Commission. The Commission had a lengthy discussion about items 4A and 4B. Chair Mitchell asked what the typical criminal history score was for aggravated sex trafficking. Senior Research Analyst Anne Wall responded that there were five first-degree cases, saying that there was one case with criminal history score (CHS) 0, two with CHS 2, and two with CHS 6; and that there were eight second-degree cases, saying that there was one with CHS 2, one with CHS 5, and six with CHS 6, and that, in conclusion, eight of the thirteen cases have a CHS 6.

Commission members requested more information on whether there was caselaw for applying the enhancement to a sex trafficking case and applying a consecutive sentence.

Director Reitz presented item 4C, “Ranking Aggravated Sex Trafficking,” dated May 6, 2022. Chair Mitchell asked for a brief discussion and initial reactions from the Commission and said the Commission would need to tackle sex trafficking and prostitution with a more robust discussion in the future and do each separately to have more time to devote to each topic. Commissioners asked questions about the numbers of cases and discussed the culpability when the victim is a real child versus an undercover agent posing as a child. Chair Mitchell asked if there were groups the Commission would like to consult with that would give them more information about the prostitution cases so they may think about unintended consequences to any action they may take. Chair Mitchell asked that the statutes be included in meeting materials for the next discussion on prostitution. A Commissioner suggested the Commission get input from the Internet Crimes Against Children Task Force Program (ICAC program).

5. Possible Technical Modifications to the 2021 Sentencing Guidelines and Commentary (Discussion)

This was on the agenda as a discussion item.

Director Reitz called on Jill Payne who presented item 5 staff paper “Possible Sentencing Guidelines Technical Correction,” dated April 28, 2022. Ms. Payne explained that there was a typo in the section which referenced aggravating factors for departure, where the word “is” serves no purpose and needs correction.

Motion by Commissioner Schnell and second by Commissioner Middlebrook to suspend the Commission’s first reading rule and adopt the staff recommendations in item 5, effective August 1, 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.

6. Possible Amendments to the Commission’s Demographic Impact Statement Policy (Action)

Director Reitz presented item 6 “Draft – Demographic Impact Statement Policy,” dated April 14, 2022. Director Reitz said there may be other possible amendments to the language that would bring the policy more in line with an executive board governance model; however, due to time constraints, staff did not have time to make those suggestions. The Commission asked staff to bring this back at a future meeting with staff-suggested amendments which will allow the Commission oversight and allow the director more flexibility.

7. Custody-Status Policy Roundtable Planning (Discussion)

Chair Mitchell stated that the idea of a roundtable is to share ideas with stakeholders and there would be someone other than the Chair facilitating the conversation to help the Commission distill options. Chair Mitchell said that it would be helpful to have some more voices at the table to help work through issues and get outside input about what the priorities are currently. Chair Mitchell would like to invite

legislators to the roundtable as well. The Commission discussed who or what groups should be invited to participate in the roundtable.

8. Legislative Update (Discussion)

This was on the agenda as a discussion item.

Before giving the Legislative Update, Director Reitz announced to public members joining the meeting online that they had just been given the ability to virtually “raise their hand” if they wished to speak during item 10, Public Input. Director Reitz asked a staff member who was joining online to raise their hand to ensure that the process was working.

Director Reitz said that pursuant to the Commission’s vote at the April 14, 2022, meeting he had submitted written testimony to the Public Safety Conference Committee. Director Reitz said that the Conference Committee is in its third day of action and that there may be agreement on one policy item. Director Reitz said that the deadline for action will be midnight the following Sunday.

9. Executive Director’s Report

This was on the agenda as a discussion item.

A. National Association of Sentencing Commissions (NASC) 2022 Annual Conference Update

Director Reitz reported that invitations had been sent out for the NASC 2022 Conference, and that the agency had enough funding to send an additional commissioner to the conference because another commissioner will be funding their own travel.

B. Vacant Peace Officer Position

Director Reitz reported that there was currently one applicant for peace officer and that, if anyone knew a licensed peace officer, they should please have them consider applying for the position.

10. 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.

11. Adjournment

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