

## Approved Meeting Minutes

**January 13, 2022**

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A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on January 13, 2022, 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.

Present in person were Commission Chair Kelly Lyn Mitchell and Commission members Cathryn Middlebrook, Justice Gordon L. Moore, Brooke Morath, Paul Schnell; and MSGC Executive Director Nate Reitz and staff member Jill Payne. Approximately 10 members of the public and media were also present in person including Maurice Ward and Nick Kimball.

Present by telephone and/or electronically were Vice-Chair Valerie Estrada and members Officer Brooke Blakey, Tonja Honsey, Judge David Knutson, Kyra Ladd, and Judge Michelle Larkin, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on December 17, 2021. Also present by telephone and/or electronically were MSGC staff members Linda McBrayer, Kathleen Madland, Shanna Mohabir, and Anne Wall, and approximately 60 members of the public including Jacqueline Williams, Guy Still, Howard Thompson, Amy Zipko, Brandon Walz, Allison Payne, Anne McKeig, Elizabeth Richland, Jacquelyn Clinton, Kelly Janssen, Tim Pugmire, Timothy Burns, Lisa Stewart, Mark Edwards, John Hultquist, Candice Mohn, Brian Sturgeon, Alicia Mraeman, Amber Jones, Amy Lauricella, Ann Papenfuss, Benjamin Johnson, Bill Werner, Brian Brurgeon, Bronwyn Hunter, Chris Georgacus, Courtney Otto, DJ Danielson, Ellen McDaniel, Emily Lefholz, Georgia Dietz, Nathan Wold, Mark Edwards, Ricardo Lopez, Robert Small, Safia Khan, Theo Keith, William Ward, Jake Thompson, Jay Lindgren, Kevin Hill, Lisa Demuth, Amanda Tinsley, Mary Lahammer, Matt Majovski and Ann Berget.

### **1. Call to Order, Roll Call, and Introduction of New Member**

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

Chair Mitchell asked Director Reitz to call the roll.

Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Eleven members were present. No members were absent. A quorum was present.

Chair Mitchell welcomed Brooke Morath, whom Governor Walz appointed last month to the Commission as a public member. Commissioner Morath introduced herself and said she was excited

and honored to serve on the Commission. Commissioners welcomed Commissioner Morath and introduced themselves.

## 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 an 11–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, 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 December 16, 2021.

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

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

## 4. Review of Public Hearing Record (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who reviewed the record of the public hearing, as follows:

- On Monday, November 15, 2021, the notice of public hearing was published in the State Register (Volume 46, No. 20).
- On the same day, the contents of the proposed modifications were posted on the Commission’s website and an e-mail notice of public hearing was sent to persons who have signed up on the Commission’s website to receive informational e-mails.
- No one was notified by United States mail because there are no longer members of the public on the United States mailing list.
- Pursuant to the notice, the public hearing was held on December 16, 2021, in the Minnesota State Capitol, Room G3, and by telephone and/or electronically.
- Twenty-nine members of the public wished to, and did, testify.
- After the public hearing, the record remained open for five calendar days, through December 21, to accept written comments. From the beginning of the public hearing notice period through the end of the public comment period, the Commission received 3,600 pages of written comments from over 3,000 people.

- A list of those who spoke at the hearing, a link to the video and audio of the hearing, and copies of the written comments were provided to all Commission members on December 28, 2021, and posted on the Commission’s web site shortly thereafter.

Director Reitz said that the Commission appeared to have complied with all public notice and hearing requirements to permit it to take final action on the proposed modifications today.

## 5. Accept or Reject Proposal to Amend the Sentencing Guidelines (Action)

This was on the agenda as an action item.

Chair Mitchell recognized Commissioner Schnell who gave remarks related to the proposal and made the following motion:

**Motion** by Commissioner Schnell and second by Vice-Chair Estrada to:

1. Withdraw action on the custody status point issue at this time for the Commission to continue its study of the custody status point as a sentencing policy; and
2. Make concerted efforts to engage and educate community members, system stakeholders, and legislators as the Commission further assesses the implications of the custody status point policy; and
3. Address the handling of the half point issue by issuing interim guidance to criminal justice practitioners that aligns with the nonprecedential Minnesota Court of Appeals case *State v. Eubanks* to direct that whenever one-half custody status point is calculated, the half point shall be rounded down for purposes of determining the criminal history score.

**Discussion:** A lengthy discussion ensued in which several commissioners spoke about the proposal and the motion.

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

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

## 6. Review and Approve 2022 Report to the Legislature (Action)

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz who presented the January 6, 2022 staff draft of the Report to the Legislature.

The Commission discussed the report and asked questions including questions about its new “Interim Decision” section and whether there was the staffing capacity to complete the task of counting all the written comments supporting or opposing the proposal. Director Reitz asked for permission to make editorial changes not inconsistent with the guidance provided by the Commission during the meeting. There were no objections.

**Motion** by Commissioner Middlebrook and second by Commissioner Schnell to approve the 2022 Report to the Legislature, subject to the changes described during the meeting, and for staff to make editorial changes not inconsistent with the guidance provided by the Commission during the meeting.

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

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

## **7. Governor's Council on Justice Reinvestment (Discussion)**

This was on the agenda as a discussion item.

Chair Mitchell introduced the item saying the Council of State Governments (CSG) has been reviewing probation data and its delivery in Minnesota on behalf of the Governor’s Council on Justice Reinvestment in which Chair Mitchell and Commissioner Schnell are members. Chair Mitchell further explained that CSG will be developing recommendations and sharing them with the Council.

Commissioner Schnell shared that he thinks it would be helpful for the Commission to look at the statewide data on probation supervision and the different delivery systems throughout the state. Chair Mitchell said CSG will be invited back before the Commission to present preliminary data at a future meeting.

## **8. Options for Consolidating Annual Public Hearings (Discussion)**

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who presented a “2022 draft – unapproved staff idea” calendar which attempted to rearrange meeting dates so that there would be more time between a December public hearing and the January meeting in which the Commission’s Report to the Legislature must be finalized. Director Reitz included in the Commission materials Minn. Stat. § 645.02 (Effective Date and Time of Laws) which addressed enactment dates for laws with appropriations being “at the beginning of the first day of July next following its final enactment, unless a different date is specified in the act...”

Commissioners asked questions and discussed deadlines and asked for more time to review solutions for the calendar. Chair Mitchell suggested it may be more advantageous to have only one public hearing per year to have a more continuous, less disjointed, process. Chair Mitchell asked for more time to think about possible solutions.

## **9. Options for February Meeting (Discussion)**

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who presents two statutes: Minn. Stat. § 13D.015 (State Entity Meetings by Telephone or Interactive Technology) and Minn. Stat. § 13D.021 (Meetings During Pandemic or Chapter 12 Emergency). Director Reitz explained that the State Capitol would not be

available for meetings because the Legislature will be back in session in late January, and that its regular meeting location in the Centennial Office Building (COB) remains closed due to COVID-19, making it inaccessible to members of the public. Director Reitz further explained that the Commission is operating under Minn. Stat. § 13D.015, which allows for hybrid meetings, but could operate under Minn. Stat. § 13D.021, if “one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location ...” and it is determined that “attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration ... .” Chair Mitchell said that there was still a health pandemic and that it was impractical for any members of the Commission or public to attend the February meeting in person.

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

Director Reitz reminded members that their annual economic interest statements were due at the end of January, and that they should receive a letter from the Minnesota Campaign Finance and Public Disclosure Board. Some Commissioners had questions about whether they needed to file more than once if they sat on more than one board or commission.

## **11. Public input**

Chair Mitchell asked if members of the public present either in person or by telephone and/or electronically wished to speak. No members of the public present in person asked to be recognized. Three members of the public present by telephone and/or electronically wished to speak.

Anne Berget, from South Minneapolis, expressed thanks to those Commissioners who showed strong support for crime victims. Berget said that, as a former crime victim, the impact of her experience stayed with her every day. She also expressed that it was wise of the Commission to postpone the decision on the half custody status point for further discussion and more current data that would consider the recent increase in crime. Berget thanked the Commission for their work and for the opportunity to listen to the meeting. Chair Mitchell thanked Anne Berget for attending the meeting and providing her comment.

Kelly Janssen, a member of the public, asked about the Governor’s Council on Justice Reinvestment and whether it was open to the public. Chair Mitchell replied that the Governor’s Council is scheduled to meet next on January 21, 2022, from 2:30 p.m. to 4:30 p.m. and on January 27, 2022, from 2:30 p.m. to 4:30 p.m., and that the meetings are held remotely, live-streamed, and accessible to the public. Janssen directed a question to Commissioner Morath about Commissioner Morath’s statement that, “Six out of ten victims say they do not want the longest sentence imposed.” Janssen asked Commissioner Morath for the citation to the finding. Commissioner Morath said the statement could be found in a national study by Alliance for Safety and Justice and the article was called, “Crime Survivors Speak: The First-Ever National Survey of Victims’ Views on Safety and Justice.” [Crime Survivors Speak Report.pdf](#)

(allianceforsafetyandjustice.org). Alliance for Safety and Justice. (n.d.).<sup>1</sup> Chair Mitchell thanked Kelly Janssen for providing her comment.

Matt Majovski, Dakota County Probation Officer, expressed appreciation to the Commission for its work. Majovski asked a procedural question about the Commission issuing interim guidance to criminal justice practitioners on the half custody status point wondering if practitioners should wait until the memo is released or whether the direction was effective immediately. Director Reitz said that the interim guidance is effective immediately. Vice-Chair Estrada thanked Majovski for his question and stated that she is in contact with Minnesota Corrections Association (MCA) directors who asked that information to be distributed through them. Vice-Chair Estrada encouraged Majovski to reach out to his director to distribute information through his department and that she is intended to write to all of the directors about the events of the meeting. Director Reitz added that the memo would be published on the Commission's website on Tuesday, January 18, 2022. Chair Mitchell thanked Matt Majovski.

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

## **12. Adjournment**

The Chair adjourned the meeting at 3:49 p.m., without objection.

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<sup>1</sup> Retrieved January 14, 2022, from <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.