

Approved Meeting Minutes

April 14, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on April 14, 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, Justice Gordon L. Moore, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff members Jill Payne and Shanna Mohabir were also present. No members of the public were present in person.

Present by telephone and/or electronically were Tonja Honsey, Kyra Ladd, 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, Anne Wall, and approximately 12 members of the public including Julie Wicklund, Ben Johnson, Ben Butler, Elizabeth Ruhland, Jacqueline Williams, Nicole McKinnon, Matt Majovski, Michelle Hipsag, and Kelly Janssen.

1. Call to Order and Roll Call

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

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

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

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

3. Recognition of Outgoing Member (Discussion)

This was on the agenda as a discussion item. Chair Mitchell recognized former Commissioner Brooke Blakey. Ms. Blakey thanked the Commission and spoke about her new position as the director of St. Paul's Office of Neighborhood Safety. Ms. Blakey explained that she now works with city departments, community leaders and "community-first partners" to expand Mayor Carter's "Community-First Public Safety Framework" and looked forward to working with the Commission in her new capacity. Chair Mitchell presented Ms. Blakey with a plaque in recognition of her year of service on the Commission. Chair Mitchell and Commission members thanked Brooke Blakey for her service on the Commission.

4. Approval of Draft Meeting Minutes from March 10, 2022 (Action)

This was on the agenda as an action item.

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

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

Voting "Yes" were Chair Mitchell and commissioners Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, and Morath.

5. Sex Trafficking Review (Discussion)

This was on the agenda as a discussion item.

Commissioner Schnell joined the meeting in person at 1:26 p.m. during the presentation.

A. Background & Rationale for 2021 Legislation

Chair Mitchell introduced Ole Tvedten, Chief of Criminal Division at the Stearns County Attorney's Office who presented the "Background & Rationale for 2021 Legislation" which, in part, summarized the Central Minnesota Human Trafficking Task Force (CMHTTF) rationale for recommendations it made to the 2021 Legislature. Mr. Tvedten described four outstanding CMHTTF recommendations for the Commission: 1. For aggravated sex trafficking offenses, replace the existing 48-month sentencing modifier with a new severity ranking at severity level (SL) A, applicable to both aggravated first- and second-degree; 2. Add sex trafficking to the Severe Violent Offense List; 3. Re-rank the prostitution offenses now ranked at SL 9, SL 5, and SL 3 on the Sex Offender Grid as SL B, SL F, and SL G, respectively; and 4. Add Patrons of Prostitution (2nd or Subsequent Violation) to the list of Offenses Eligible for Permissive Consecutive Sentences. The Commission asked questions and discussed the presentation. Chair Mitchell thanked Mr. Tvedten. Director Reitz said that the presentation will be available on the Commission's website by Tuesday and will be emailed directly to the Commission after the meeting.

B. Answers to Questions from March Meeting

Director Reitz and Anne Wall presented the staff information paper on “Sex Trafficking Questions.” They discussed Aggravated Sex Trafficking, Departure Rates and Reasons for Departure, and Aggravated Sex Trafficking – Offense Characteristics.

The Commission discussed items 5.A and 5.B and Chair Mitchell recommended that the Commission focus on the three distinct issues it has before the body: 1. Should Aggravated Sex Trafficking be a modifier or moved to the Sex Offender Grid? 2. Whether or not the Commission should add Sex Trafficking to the Severe Violent Offense List? 3. Whether to move some of the prostitution offenses to the Sex Offender Grid? There were no objections to the process.

6. Custody-Status Policy Study (Discussion)

This was on the agenda as a discussion item.

A. Answers to Questions from March Meeting

Chair Mitchell called on Director Reitz who presented the staff information paper on “Impact of Custody Status on Prison Sentences.” He discussed the impact the custody status has on sentences and the prison cases with custody status that were sentenced 2019. Jill Payne presented the staff information paper on “Custody Status Point Waiver – Policy & Sentencing Practices.” She discussed the CSP Waiver – Policy, CSP Waiver – Data Summary, and Custody Status Point or Half-Point Waiver Policy Language.

Chair Mitchell and Commissioners thanked staff for the presentation and said that it was helpful when looking at the custody status policy issue.

B. Roundtable Planning

Chair Mitchell said she would like to proceed by having a roundtable and by inviting stakeholders to join in discussing a potential solution. Chair Mitchell recommended the roundtable could take place on July 28, 2022, because it is already a Commission meeting date and it was after the Legislative session when Legislators may be able to attend. Chair Mitchell suggested the Commission begin at its May meeting by crafting an invitation to stakeholders and determining who to invite suggesting the Commission ask an outside facilitator to lead the discussion. The Commission had no comments or objections.

7. Demographic Impact Statement Policy (DIS)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz and said that the Demographic Impact Statement item could be moved to the May agenda in the interest of time, if necessary.

A. DIS Update (Discussion)

Director Reitz briefly gave an update on the five demographic impact statements that met the Commission's DIS policy criteria that have been prepared so far this session: Senate File No. 2850; House File No. 4174; House File No. 1355; Senate File No. 2576; Senate File No. 2673. Director Reitz said that, per the Commission's DIS policy, today was the date in which those DISs were final unless it was withdrawn or changed by a majority vote of the Commission.

B. Possible Amendments to the Commission's DIS Policy (Action)

Due to time constraints, Chair Mitchell tabled this item to the May 12, 2022, agenda.

8. Legislative Update (Discussion; Possible Action)

This was on the agenda as a discussion item.

A. Review of MSGC's Legislative-Recommendation Mandate (Minn. Stat. § 244.09, subd. 6)

Chair Mitchell called on Director Reitz who reviewed the Commission's enabling legislation highlighting a sentence in subdivision 6 which states, "[T]he commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing." Director Reitz explained the reason for highlighting this was because it is within the Commission's scope to make recommendations to the Legislature; and because, each year in June after session ends, the Commission must respond to legislative changes made to criminal law and that it will be more familiar to the Commission if it previews it beforehand. Chair Mitchell added that another reason for the legislative update was so that the Commission may ask Director Reitz to testify on behalf of the Commission for a particular proposal; and that he could not advocate or oppose a policy unless the Commission had formally taken a position on it.

B. Senate Omnibus Public Safety Bill (SF2673)

Director Reitz highlighted policy proposals that may be of most interest to the Commission based on whether the proposal directly affected the MSGC; was estimated to increase or reduce prison-bed populations; and hardened mandatory minimums or eliminated sentencing discretion. The Commission discussed several of the policy proposals including one requiring the Commission to post its sentencing data on a searchable online platform (SF 2256, Art. 1 § 10). The Commission agreed that it would be helpful for Director Reitz to give input at the conference committee and provide helpful information and expertise that the Legislature may have not considered during the bill drafting process. The Commission did not view this as taking a policy position.

Chair Mitchell asked that the Commission consider taking a formal position on the policy proposal in Art. 2 § 23 (SF 870) that would expand the list of offenses exempt from the Guidelines' five-year presumptive probation cap to include some drug offenses in Minn. Stat. Ch. 152. Chair Mitchell

explained that much of the rationale for the Commission’s probation cap policy was based on disparities in probation lengths for drug offenses.

Motion by Commissioner Morath and second by Commissioner Middlebrook to recommend that the Legislature delete references to Ch. 152 offenses from art. 2, sec. 23, of Senate File 2673, 2nd engrossment.

Discussion: A lengthy discussion ensued. Commissioner Knutson expressed concern over taking a position at this time when there was not a companion bill. Commissioner Larkin observed that, in her time on the Commission it had not taken a formal position on potential legislation. Commissioner Moore expressed concerns over the process of taking a position on a legislative policy especially for those members who are in the Judicial Branch. Chair Mitchell gave an example from the past of when the Commission had taken a formal position on a legislative proposal that made all sex offenses indeterminate sentences because it conflicted with the Commission’s principles. Commissioner Middlebrook recalled that the probation cap policy was developed, in part, based on recommendations by the stakeholders who agreed probation should be capped for drug offenses because of the disparity in sentences observed in different parts of the state. Commissioner Honsey said not to take a position would be contrary to the Commission’s policy decision because public testifiers at that time spoke about the disparities in drug sentences.

Motion carried on a 5-4 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Honsey, Middlebrook, Morath, and Schnell.

Voting “No” were commissioners Knutson, Ladd, Larkin, and Moore.

C. House Omnibus Public Safety Bill (HF4608)

Director Reitz briefly highlighted policy proposals that may be of most interest to the Commission noting whether the proposal directly affected the MSGC; and was estimated to increase or reduce prison-bed populations. There were no questions or discussion.

D. Bill to Classify MSGC Staff (HF3013/SF2669)

Director Reitz stated that HF 3013/SF 2669 would make MSGC analysts classified state employees and that it passed the House as a standalone bill on April 4, 2022; the vote was 77 to 57.

9. Executive Director’s Report

This was on the agenda as a discussion item.

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

Director Reitz said the annual conference will be held from August 8, 2022, to August 10, 2022 in Portland, Oregon. He informed the Commission that they have the funds to invite two commission members other than the chair to the conference.

B. Electronic Worksheet System Update

Director Reitz said the Electronic Worksheet System was updated and now reflects the interim guidance and the change was made on March 22, 2022. Director Reitz thanked Commissioner Schnell and the MNIT staff at Department of Corrections.

C. May 12 Meeting Location

Director Reitz said there were no technical issues with the Afton Room and asked if the Afton Room would be suitable going forward. There were no objections.

Director Reitz informed the Commission of a memorial service for Washington County Attorney Pete Orput, who was a member of the Commission from 2016 to 2020. Chair Mitchell and members expressed sadness over Mr. Orput's death and gratitude for his friendship and leadership.

10. Public Input

This was on the agenda as a discussion item.

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

Matt Majovski, Dakota County Probation Officer, expressed appreciation for the Commission's work and asked a question about Senate File 2850 that would extend the term of imprisonment to three-fourths asking whether it would affect jail sentences and how Minnesota's formula compares with other states. Director Reitz replied that it would not affect jail sentences. Director Reitz stated that staff did not attempt to make the comparisons with other states. Chair Mitchell thanked Mr. Majovski adding that there is a wide variety in how other states manage truth-in-sentencing laws.

Nicole McKinnon, a crime victim, shared her story and the affects it has had on her family. Ms. McKinnon shared that her daughter, who was once excelled in academics, sports, and had an active social life was affected when her middle school principal encouraged her and 55 other students to send inappropriate images of themselves to him. Ms. McKinnon said that there was sufficient evidence to charge him federally and he was given a sentence of 25 years in prison, but had the principal been changed under Minnesota law he would have received probation because he was a first-time offender. Ms. McKinnon asked why Minnesota would allow probationary sentences saying it sends a message to sexual predators that this type of abuse towards children is not tolerated in Minnesota.

Chair Mitchell thanked Ms. McKinnon for sharing her story and asked if she knew what the offense would have been under Minnesota's Guidelines. Ms. McKinnon said she remembered that it would only carry a sentence of probation. Director Reitz said that he was present several years ago when Ms. McKinnon testified in front of the House Crime Committee and that her testimony was transcribed and

taken into consideration by the Commission when it did its comprehensive review of child pornography. Ms. McKinnon said she appreciated that. Chair Mitchell thanked McKinnon for attending the meeting.

Michelle Hipsag, a crime victim, thanked the Commission for allowing the public to participate in the meeting and commented that she was opposed to the elimination of the custody status point. 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. Hipsag mentioned a recent Amber alert about the abduction of a two-year-old in Pope County where the abductor by a repeat offender. She urged the Commission to listen to public input when considering eliminating the custody status point. Chair Mitchell thanked Ms. Hipsag.

Kelly Janssen, a crime victim, shared her story about a family member who was in a car accident and was hit by a drunk driver. Ms. Janssen said the victim was hit head on and needed to go to the emergency room to receive five staples in his head from the accident. Ms. Janssen stated that this was not the offender's first time being caught driving drunk. She continued saying that she wanted the Commission to hear a victim's story and that the initial sentence the offender was given was not enough to deter her from committing the offense again. Chair Mitchell thanked Ms. Janssen for sharing her story with the Commission.

No one else asked to be recognized.

11. Adjournment

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