

Approved Meeting Minutes

December 15, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 15, 2022, in the Minnesota State Capitol Building, Room G-3, 75 Rev. Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota 55155; and by telephone and/or electronically.

Present in person were Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada and Commission members Judge David Knutson, Cathryn Middlebrook, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff members and Jill Payne were also present in person. Members of the public present in person included David Zimmer, Center of the American Experiment, and Dana Ferguson, Minnesota Public Radio.

Present by telephone and/or electronically were Commission members Judge Michelle A. Larkin, Kyra Ladd, and Justice Gordon L. Moore, III, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on November 4, 2022. Also present by telephone and/or electronically were MSGC staff members Kathleen Madland, Shanna Mohabir, and Anne Wall; and members of the public including John Hultquist, Julie Wicklund, Kelly Janssen, Kevin Hill, Matt Majovski, Robert Small, and Tami Jo Lieberg.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:52 p.m., a few minutes after the conclusion of a public hearing on a proposal to amend the Sentencing Guidelines.

Director Reitz called the roll. Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Nine members were present and two members were absent. A quorum was present.

2. Approval of Draft Meeting Agenda (Action)

This was on the agenda as an action item.

Motion by Commissioner Knutson and second by Commissioner Schnell 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 Knutson, Ladd, Larkin, Middlebrook, Moore, Morath and Schnell.

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

This was on the agenda as an action item.

Motion by Commissioner Middlebrook and second by Vice-Chair Estrada to approve the November 3, 2022, draft meeting minutes.

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

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

4. Statistical Summary 2021 Sentencing Practices (Discussion)

This was on the agenda as a discussion item.

Director Reitz introduced the presentation of the 2021 MSGC annual summary statistics for felony cases saying that the summary will be included in the 2023 Report to the Legislature. Director Reitz and research staff Jill Payne and Kathleen Madland reported on case volume; distribution of cases by race and ethnicity and geography; incarceration rates by gender, race and ethnicity, and geography; notable record-high rates for cases recommended prison (36.1%), mitigated dispositional departures for recommended prison cases (45.7%), and a record-high average prison sentence of 54 months.

The Commission asked questions and made comments to incorporate into the 2023 Report to the Legislature.

5. Review of Draft Report to the Legislature (Discussion)

This was on the agenda as a discussion item.

Director Reitz introduced the remaining sections of the draft 2023 Report to the Legislature noting each section.

The Commission asked questions and made comments and suggestions to incorporate into the 2023 Report to the Legislature.

6. MSGC’s Agency Rulemaking Docket (Action)

This was on the agenda as an action item.

Director Reitz introduced the staff issue paper, “MSGC Agency Rulemaking Docket,” dated 12/5/2022, which recommended, among other things, that the Commission consider amending its Administrative Rules to modernize and streamline its meeting calendar. Director Reitz said that, if the Commission wished to consider amending its rules in 2023, staff recommended establishing a rulemaking docket at this time in order to put the Legislature and the public on notice.

Motion by Commissioner Schnell and second by Commissioner Middlebrook to adopt the staff recommendation and establish a rulemaking docket not related to Commission policy procedures.

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

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

7. Modification to Comment 3.C.01- New Statutory Reference (Action)

This was on the agenda as an action item.

Director Reitz introduced a possible modification to the Commentary of the 2022 Minn. Sentencing Guidelines resulting from competency restoration reform in Minn. Laws ch. 99, art. 1, § 37, effective July 1, 2023, and codified in Minn. Stat. § 611.51. Director Reitz recommended cross-referencing the new statute in Comment 3.C.01, and making a technical correction to the reference to the Rules of Criminal Procedure.

Motion by Vice-Chair Estrada and second by Commissioner Larkin to modify Comment 3.C.01 effective August 1, 2023, as follows:

Modifications to 2022 Minn. Sentencing Guidelines & Commentary, Comment 3.C.01, effective August 1, 2023:

* * *

Comment

3.C.01. *Jail credit is governed by statute and rule – see, e.g., Minn. Stat. §§ 609.145 & 611.51 and Minn. R. Crim. P. 27.03, subd. 4(B) – and a great deal of case law. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that an offender in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial.*

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

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

8. Executive Director’s Report (Discussion)

This was on the agenda as a discussion item.

Director Reitz had nothing to report.

9. Public Input

Chair Mitchell asked if there were members of the public who wished to speak.

David Zimmer from the Center of the American Experiment, appearing in person, presented departure data from MSGC which appeared to contradict the disparity findings made by Dr. Uggen and Hannah Schwendeman in June 2022. Chair Mitchell clarified that the MSGC data Mr. Zimmer was referencing were descriptive statistics and did not control for variation in such things as criminal history and that the Uggen/Schwendeman research was adjusted, controlling for factors such as criminal history where disparity could only be explained by race and ethnicity. Mr. Zimmer thanked the Commission.

Matt Majovski, appeared remotely, and wished everyone a happy holiday season.

Chair Mitchell thanked the members of the public for speaking.

10. Adjournment

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