

Approved Meeting Minutes

July 28, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on July 28, 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 Kyra Ladd, Judge Michelle A. Larkin, Cathryn Middlebrook, Justice Gordon L. Moore, and Brooke Morath. MSGC Executive Director Nate Reitz and staff members Shanna Mohabir and Jill Payne were also present in person as were guest speakers Executive Director Robin Phillips and Volunteer Kaarin Long, the Advocates for Human Rights. Members of the public present in person included John Croman, KARE11-TV.

Present by telephone and/or electronically were Vice-Chair Valerie Estrada, and members Tonja Honsey and Judge David Knutson, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on July 7, 2022. Also present by telephone and/or electronically were MSGC staff members Linda McBayer, Kathleen Madland, Anne Wall and thirty members of the public including Nick Lambert, Lisa Walker, Ben Enerson, Rosalyn Park, Dana Ferguson, Holly Hurst, Jacque Clinton, Ashley Halbach, Bree Levine, Emily Lefholz, Leanne Walter, Lindsay Brice, Nathan Wold, Tracy Hosking, Zach Fuller, Ben Johnson, John Croman, Pafoua Yang, John Hultquist, Matt Majovski, Rachel Ganani, Michelle Hipsag, and Kelly Janssen.

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, Middlebrook, and Morath. At the time of roll call, seven members were present and four were absent. A quorum was present.

Commissioner Moore joined the meeting in person at 1:05 p.m.

2. Welcome New Member

The new member, Officer Mohamoud Ibrahim, was absent due to police training.

3. Approval of Agenda (Action)

This was on the agenda as an action item.

It was observed that, although draft minutes from the July 21, 2022, Special Commission Meeting – Custody Status Roundtable had been provided as part of the meeting materials, the agenda did not include approval of the July 21 minutes, the Commission did not have a full week to review those draft minutes, and those minutes could be approved at the September meeting.

Motion by Commissioner Ladd and second by Commissioner Middlebrook to move approval of the agenda, amended to delete the previous agenda item (“Welcome New Member”).

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

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

4. Approval of Draft Meeting Minutes from June 9, 2022 (Action)

This was on the agenda as an action item.

Motion by Commissioner Moore and second by Commissioner Vice-Chair Estrada to approve the meeting minutes from June 9, 2022.

Motion carried on a 7–0 roll-call vote.

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

5. Continuation of Sex Trafficking & Prostitution Review (Discussion)

This was on the agenda as a discussion item.

Director Reitz introduced guest speakers from the Advocates for Human Rights Executive Director Robin Phillips and Volunteer Kaarin Long. Chair Mitchell thanked the guest speakers and took a moment to ground the conversation and reminded the Commission that almost 15 years ago, in 2009, the Advocates for Human Rights advised the Commission to delay moving prostitution offenses to the Sex Offender Grid out of concern for unintended consequences to victims and survivors. Chair Mitchell said that the Commission did, in fact, delay action in 2009. Chair Mitchell further explained that the guests were invited back today to see if perspectives or information had changed which would lead to a different recommendation and conclusion.

Director Reitz asked whether the Advocates for Human Rights still had concerns about putting prostitution offenses, under Minn. Stat. § 609.324, on the Sex Offender Grid. Director Phillips explained that, since 2009, there were statutory changes that separated sex trafficking from sex workers which helped alleviate concerns about unintended consequences to victims and survivors. Phillips asked the Commission to consider including clarifying Commentary making distinctions between underage purchasers and underage sex workers. Phillips also requested that Commentary highlight that

trafficking may be involved in any transaction regardless of the age of the purchaser and that prosecutors may wish to take this into consideration. Director Reitz clarified that if the Commission moved prostitution, under Minn. Stat. § 609.324, to the Sex Offender Grid, that it would apply to all cases including those with underage purchasers.

Director Reitz asked the guest speakers whether they had concerns about the staff recommendations in the staff paper “Ranking Prostitution Offenses on the Sex Offender Grid” dated May 6, 2022. Director Phillips agreed with the analysis in the paper but stated that the Advocates for Human Rights recommended ranking all Using Child for Prostitution offenses with the same statutory maximum penalty at the same severity level regardless of whether an actual child victim existed.

Commissioner Larkin joined the meeting in person at 1:20 p.m.

At 1:22 p.m., Director Reitz announced to in-person participants that there were technical difficulties and the room had lost connectivity with the remote participants. The technical issues were resolved, and the meeting resumed at 1:23 p.m.

Director Phillips resumed the presentation to the Commission, stating that they urged robust monitoring and oversight of the changes to ensure that the law does not increase racial disparities. Director Reitz thanked the guest speakers. Chair Mitchell asked if there were questions. Given there were no questions, Chair Mitchell again thanked the speakers for providing helpful information.

6. Custody-Status Policy Roundtable Debrief (Discussion)

Chair Mitchell thanked commissioners for attending the Roundtable meeting on July 21, 2022, restating that the purpose was to continue the conversation about how to address custody status and would like the Commission to discuss some of the ideas from that meeting and how to move forward.

Chair Mitchell observed a few themes from the Roundtable including that some roundtable participants made distinctions about people who commit a new offense while on custody status being more blameworthy and more deserving of punishment; some offenses might pose a greater risk to public safety; some repeat offending is caused by addiction that might present different considerations for the Commission; supervision intensity differs depending on the type of custody status and resources available; and that the Commission should be mindful of the racial impact of the policy. Chair Mitchell said that she noticed that no one at the meeting spoke in favor of a one-size-fits-all approach. The Commission had a brief discussion.

Chair Mitchell thanked Commissioner Larkin for submitting the memorandum, “Compromise Proposal” dated July 27, 2022, for the Commission’s consideration. Chair Mitchell stated that other members were welcome to submit proposals for consideration at the next meeting reminding members that staff was available to help draft language if submitted in a timely manner.

7. 2022 Republication of the Minnesota Sentencing Guidelines & Commentary (Action)

This was on the agenda as an action item.

Director Reitz asked the Commission if it wished to publish an August 1, 2022, Minnesota Sentencing Guidelines & Commentary given there were no new felony crimes passed in the 2022 Regular Legislative Session and no other changes to the Guidelines had been approved. Director Reitz explained that it was staff's opinion that a new version would make it easier for practitioners who rely on a new publication each year.

Motion by Commissioner Middlebrook and second by Commissioner Larkin to republish the Minnesota Sentencing Guidelines & Commentary on August 1, 2022.

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

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

8. MSGC FY24–25 Budget Change Requests (Discussion)

This was on the agenda as a discussion item.

Director Reitz explained that all budget change items must be authorized by the Commission, and that he was working on a change request to Minnesota Management and Budget that would include a new staff member. Director Reitz requested time on the September agenda to describe the details of the new position.

At 2:12 p.m., Director Reitz announced to in-person participants that there were technical difficulties and the room had lost connectivity with the remote participants. The technical issues were resolved, and the meeting resumed at 2:13 p.m. Chair Mitchell thanked everyone for their patience.

9. Executive Director's Report (Discussion)

This was on the agenda as a discussion item.

Director Reitz reminded the Commission that National Association of Sentencing Commissions (NASC) annual conference would be held from August 8–10, 2022, in Portland, Oregon. Director Reitz stated that Chair Mitchell, Commissioner Knutson, Commissioner Ladd, Senior Research Analyst Jill Payne, and he would be attending the NASC conference, although Chair Mitchell was not attending at MSGC expense.

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.

Michelle Hipsag, a victim thanked the Commission for the informative meeting and said that the public was concerned about repeat violent offenders. Chair Mitchell thanked Hipsag for their comments.

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

11. Adjournment

Chair Mitchell adjourned the meeting at 2:23 p.m., without objection.