

Approved Meeting Minutes

November 4, 2021

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on November 4, 2021, 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 MSGC staff member Jill Payne.

Present by telephone and/or electronically were Vice-Chair Valerie Estrada and members Captain Brooke Blakey, Tonja Honsey, Judge David Knutson, Kyra Ladd, Judge Michelle Larkin, Cathryn Middlebrook, Justice Gordon L. Moore, III, and Commissioner of Corrections Paul Schnell, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on October 8, 2021. Also present by telephone and/or electronically were MSGC Executive Director Nate Reitz, and MSGC staff members Kathleen Madland, Linda McBrayer and Anne Wall. Members of the public present by telephone and/or electronically were Benjamin Johnson, House Research; Safia Khan, Department of Corrections; Elizabeth Ruhland; Ellen McDaniel; Matt Majovski, Dakota County Adult Probation; Robert Small, Minn. County Attorneys Association; William Ward, Minn. State Public Defender; and Matt Herman, Michelle Rodriguez, and Carl Reynolds, Council of State Governments. There were no members of the public present in person.

1. Call to Order & Roll Call

Chair Mitchell called the meeting to order at 1:01 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, and Schnell. Ten members were present. No members were absent. One seat was vacant. A quorum was present.

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 a 10–0 roll-call vote.

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

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Commissioner Estrada and second by Commissioner Moore to approve the meeting minutes from October 7, 2021.

Motion carried unanimously on a 10–0 roll-call vote.

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

4. Justice Reinvestment in Minnesota (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell introduced Carl Reynolds, Senior Legal and Policy Advisor, Council of State Governments, who presented “Justice Reinvestment Initiative Minnesota” (item 4C of the meeting materials). Mr. Reynolds discussed the scope of the project, sentencing aspects, funding, and next steps.

Chair Mitchell asked members if they had questions at this time. Hearing no questions, Chair Mitchell thanked the presenter and said that the Commission will hear more including some initial findings at its December meeting.

5. Custody Status Proposals (Action)

This was on the agenda as an action item.

Chair Mitchell recalled that at the October 7, 2021, meeting, the Commission discussed seven custody status proposals and identified three proposals to bring forward today: 1. Display half points on grids; 2. Repeal custody-status policy without replacement; and 3. Replace custody-status policy with a one-cell aggravating factor.

Chair Mitchell said that the goal of today’s meeting would be to focus on the substance of each proposal with an opportunity to compare and contrast the three proposals in order to determine which will go forward to public hearing. Chair Mitchell asked that the Commission continue the conversation comparing and contrasting the proposals before making motions. Chair Mitchell called on Director Reitz to review the three proposals using the following staff information papers and presentations:

- (Item 5A) “Summary of November Custody Status Proposals, Oct. 15, 2021;”
- (Item 5B) “Estimated Impact of November Custody Status Proposals, Oct. 22, 2021;”
- (Item 5C) “Comparison of the November Custody Status Proposals, Oct. 25, 2021;”
- (Item 5D) “Staff-Drafted Guidelines Language for November Custody Status Proposals, Oct. 21, 2021;” and

- (Item 5E) “Where people with custody status points appear on the Sentencing Grids, Nov. 4, 2021.”

The Commission had a lengthy discussion about the three proposals, weighing them against each other and against the Sentencing Guidelines’ principles. Much of the discussion focused on public safety and the complexity of each of the proposals.

A commissioner asked how often judges waive the custody-status point saying that this would be good information to know in the context of this discussion because a waiver is discretionary and should only be granted when it can be established that it “is consistent with public safety.” Executive Director Reitz said that the policy is fairly new and the data have not been analyzed yet but that it does not appear to be indicated on the sentencing worksheets very often.

Several commissioners were interested in the “heat map” in the staff presentation “Where people with custody status points appear on the Sentencing Grids” (Item 5E), showing that the majority of cases with a custody status point were lower severity-level offenses. Some commissioners argued against the proposal to eliminate the custody status point because it offered no additional consequence, does not hold people accountable for their actions, and treats people alike who are not similarly situated; therefore, it does not support determinate sentencing. Other members argued that the evidence does not support using a custody status point because it is the only component of the criminal history score that doesn't measure prior offending, it is not uniformly applied, it does not predict recidivism; therefore, it has no impact on public safety.

The time was 3:04 p.m., and Chair Mitchell called for a break, saying that commissioners may wish to make a motion for one of the custody status proposals following the break. Chair Mitchell called the meeting back to order at 3:15 p.m. Chair Mitchell called on Executive Director Reitz to explain the public hearing process and how motions should be phrased, after which Chair Mitchell asked if any commissioner wished to make a motion for one of the custody status proposals.

Motion by Commissioner Larkin and second by Commissioner Ladd to move Proposal 1 (Display half points on grids) forward to public hearing for further consideration.

Discussion: Commissioners Larkin and Moore spoke in favor of the motion. Commissioner Schnell spoke against the motion. Commissioner Knutson spoke in favor of the motion. Chair Mitchell spoke against the motion.

Motion failed on a 4–6 roll-call vote.

Voting “Yes” were commissioners Knutson, Ladd, Larkin, and Moore.

Voting “No” were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Middlebrook, and Schnell.

Chair Mitchell asked if any commissioner wished to make another motion for one of the other two custody status proposals.

Motion by Commissioner Estrada and second by Commissioner Middlebrook to move Proposal 2 (Repeal custody-status policy without replacement) forward to public hearing for further consideration.

Discussion: Commissioner Estrada spoke in favor of the motion.

Motion carried on a 6–4 roll-call vote.

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Middlebrook, and Schnell.

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

6. Preview – 2022 Report to the Legislature (Discussion)

Chair Mitchell called on Director Reitz who said that the above proposal will receive a public hearing on Thursday, December 16, 2021, which is also the date of the scheduled Commission meeting. Director Reitz explained that the public hearing will be hybrid in Capitol Room G3 and on-line, and that following the public hearing would be an opportunity for the Commission hold its regularly scheduled meeting to review a draft of its 2022 Report to the Legislature, which is due January 15, 2022. Director Reitz further explained that the report will include the mandated items, but the 2020 Monitoring Data section (which is not mandated but usually included) will look different because of the impact COVID-19 had on sentencing numbers in the courts and in corrections; trend data will not be highlighted due to the anomalies of 2020.

7. Executive Director’s Report

Director Reitz reported that the Governor’s office interviewed a promising candidate for the vacant victim representative seat on the Commission, and that through follow-up emails on October 25 and 27, the Governor’s office replied on October 28 that they were working through the process and were hoping to announce “in the coming weeks.”

8. Public Input

Chair Mitchell asked if members of the public present by telephone and/or electronically wished to speak. Matt Majovski, a probation officer with Dakota County, who did not speak on behalf of Dakota County, expressed gratitude and appreciation for the Commission and its complicated and difficult work. Chair Mitchell asked if anyone else wished to speak. No one asked to be recognized. Chair Mitchell noted that there were no members of the public present in person.

9. Adjournment

Before adjourning, Chair Mitchell wished to thank the Commission for its discussion and each commissioner's principled views of the custody status point issue.

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