

Approved Meeting Minutes

October 6, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on October 6, 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, Vice-Chair Valerie Estrada 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. No members of the public were present in person.

Present by telephone and/or electronically were Commissioners Mohamoud Ibrahim, Judge David Knutson and Commissioner of Corrections Paul Schnell, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on September 9, 2022. Also present by telephone and/or electronically were MSGC staff members Kathleen Madland, Linda McBrayer, and Anne Wall; and seventeen members of the public including Amanda Tinsley; Angela Cook; Bree Levine; Gene Dornink; Jacqueline Williams; Kelly Janssen; Matt Majovski; Pari Glessing; Timothy Burns; John Hultquist; Alex Derosier; Jacquelyn Clinton; Lisa Anderson, Minn. Management Analysis and Development (MAD); and Robert Small, Minn. County Attorneys Association (MCAA).

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 Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Ten members were present and one member was absent. A quorum was present.

2. Approval of Meeting Agenda & Meeting Minutes (Action)

This was on the agenda as an action item.

Motion by Commissioner Middlebrook and second by Commissioner Ladd to approve the October meeting agenda and September 8, 2022, meeting minutes.

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

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

3. MSGC FY24-25 Budget Change Request (Action)

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz who presented item 3, “MSGC FY24-25 Budget Change Request,” dated October 6, 2022. Director Reitz reported on the four proposed change items, which consisted of the Comprehensive Review of the Sentencing Guidelines, Fully Integrate with the Court Information System, Expand Analysis of Sentencing-Related Data, and Improve Fiscal Transparency & Agency Independence.

The Chair asked the Commission if it had any questions about the presentation. One commissioner recommended prioritizing change items as follows:

- Any additional funding need for maintaining payroll, health insurance, benefits, and staffing
- Integration with Court Information System
- Expanding the Analysis of Data
- Improve Fiscal Transparency
- Comprehensive Review of the Sentencing Guidelines

The Commission asked questions and had a lengthy discussion. Chair Mitchell and commissioners spoke in favor of the budget requests and expressed their gratitude towards Director Reitz and staff for their work. Some commissioners expressed concerns about the timeline for the comprehensive review, obtaining the personnel to collect data, and requesting funding promptly.

Chair Mitchell asked Director Reitz to present the timeline and talk about the Office of Management Analysis and Development’s (MAD’s) involvement.

A commissioner expressed concerns about waiting four years to finish the comprehensive review before addressing public-safety concerns like repeat violent offenders asking what message that might send to the public. Chair Mitchell acknowledged these concerns, saying the Commission should comprehensively look at how the Guidelines address repeat, violent offending and acknowledged the priority and complexity of the topic. Chair Mitchell talked about developing a way of prioritizing topics and questions for the comprehensive review.

Motion by Commissioner Schnell and second by Vice-Chair Estrada to direct staff to advance the Executive Director’s proposed budget change items to MMB by October 17, 2022.

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

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

4. Sex Trafficking & Prostitution Review (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz who reminded the Commission that there is no legal deadline for the Sex Trafficking and Prostitution review and that the goal of today's meeting was to discuss all November decision points. Director Reitz continued by presenting item 4 "Sex Trafficking & Prostitution Review" dated October 6, 2022. He presented the two main Sex Trafficking decisions points:

1. Aggravated Sex Trafficking is currently a 48-month sentence modifier. Should it be a ranked offense instead?
2. If Aggravated Sex Trafficking 1st Degree (minor victims) is ranked at severity level A, should Aggravated Sex Trafficking 2nd Degree (adult victims) be ranked below at severity level B?

Commissioners asked questions and discussed the severity level of aggravated first-degree and second-degree sex trafficking and the difference between the victim being an adult and a child. Chair Mitchell asked Director Reitz to display the sex trafficking statute so the Commission could look at and discuss the aggravating factors.

The Commission then discussed Figure 1, "Presumptive Sentences for First Degree Sex Trafficking: Not Aggravated; Aggravated, Under the Current Guidelines Modifier; and If Aggravated Were Ranked at Severity Level (SL) A," and Figure 2, "Presumptive Sentences for Second Degree Sex Trafficking: Not Aggravated; Aggravated, Under the Current Guidelines Modifier; If Aggravated Were Ranked at SL B; and If Aggravated Were Ranked at SL A," which were within item 4A2, "Sex Trafficking & Prostitution Review."

Director Reitz presented two additional issues. First, he asked the Commission, "Is Sex Trafficking a Severe Violent Offense?" The Commission analyzed the six options that were presented and shared their input. The second issue was, "What are the decision points regarding using a minor for prostitution and patrons of prostitution, and should patrons of prostitution be eligible for permissive consecutive sentencing?" A commissioner expressed reservations about the Commission's readiness to address the prostitution issues in November. Chair Mitchell said that the Commission needs to figure out if they are at the point where they are ready to decide if either of those offenses should be moved over to the sex offender grid. She asked if anyone else had any other questions or comments before moving on to item 5.

5. Possible Custody Status Guidelines Amendments (Discussion)

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz, who reminded the Commission that there was no requirement to act today on custody status and that the goal of today's meeting was to discuss all viable November options for resolving the inconsistencies. Director Reitz presented item 5 "Custody Status Guidelines Amendments - October Discussion," dated October 6, 2022. Commissioner Larkin explained her Custody Status proposal memorandum, item 5B, entitled "New Custody Status Proposal," dated

September 29, 2022. Commissioner Larkin said there may be a need to amend the proposal to clarify points and asked for staff's assistance.

The Commission had a lengthy discussion in which there were shared concerns among commissioners about continuing to work on custody status if they were planning a comprehensive review. An example was presented to the Commission where, at the National Association of Sentencing Commission's (NASC's) conference, other states had a different approach to repeat offending other than custody status, and suggested Minnesota may review and evaluate the validity of custody status for punishing repeat offenders. Commissioners discussed current proposals and the possibility of future proposals. One commissioner expressed interest in learning more about how Washington and Pennsylvania apply custody status. No one expressed an inclination to act on eliminating custody status in November. Chair Mitchell asked the Commission if they had any other questions before moving on to the next agenda item.

6. Executive Director's Report (Discussion)

This was on the agenda as a discussion item.

Director Reitz informed the Commission that he will be taking two weeks of vacation before the November Commission meeting.

7. Public Input

Chair Mitchell asked if there were any members of the public who wished to speak. No one asked to be recognized.

8. Adjournment

Chair Mitchell adjourned the meeting at 3:46 p.m., without objection.