

Approved Meeting Minutes

June 7, 2023

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 7, 2023, 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 Commission members Officer Mohamoud Ibrahim, Judge David Knutson, Kyra Ladd, Cathryn Middlebrook, Justice Gordon L. Moore, III, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff members Linda McBrayer, Jill Payne, and Anne Wall were also present in person. Members of the public present in person were Sue Carter, Deb Dailey, Jodi Ehlenz, Prof. Richard Frase, and Prof. Kevin Reitz.

Commission member and Judge Michelle A. Larkin was present electronically, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on May 12, 2023. Also present by telephone and/or electronically was MSGC staff member Kathleen Madland; and members of the public including Damion Kushan, Matt Majovski, and Desiree Oakley.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:04 p.m.

Director Reitz called the roll. Present were Chair Mitchell and commissioners Ibrahim, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Nine members were present, one member was absent, and one seat was vacant. A quorum was present.

2. Recognition of Employee Service

Chair Mitchell and Director Reitz recognized Anne Wall for her 39 years of service to the State of Minnesota and the Sentencing Guidelines Commission. Anne Wall was presented with an award for almost four decades of public service. Anne Wall thanked Chair Mitchell and the Commission as well as Director Reitz and former Director Deb Dailey, who was in attendance.

3. Approval of Draft Meeting Agenda (Action)

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 9–0 roll-call vote.

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

4. Approval of Draft Meeting Minutes from May 11, 2023 (Action)

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Commissioner Knutson to approve the May 11, 2023, draft meeting minutes.

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

Voting “Yes” were Chair Mitchell and commissioners Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell. Commissioner Ibrahim abstained.

5. 2023 Regular Session Laws

A. Ranking Newly Created or Amended Crimes, Part 2 (Action)

This was on the agenda as an action item.

Chair Mitchell called on Director Reitz who presented (5A1) “Ranking Newly Created or Amended Crimes, Part 2,” dated June 5, 2023. Director Reitz gave the Commission general background on assigning severity-level rankings. Director Reitz explained that, unless the Commission specifies otherwise, it was understood that any modifications adopted by the Commission will be subject to a public hearing on July 20, 2023, and to the Commission’s final action on July 27, 2023. The document also explained that, unless otherwise specified, the specified effective date of all modifications is August 1, 2023, to apply as provided in Guidelines section 3.G.

Director Reitz described the following newly created and amended crime laws including staff recommendations for amendments to the 2022 Minn. Sentencing Guidelines and Commentary; and the Commission discussed and took action, as follows.

1. Labor Trafficking – Restructured Offense and Mandated Review

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Ladd and second by Commissioner Larkin to leave Labor Trafficking (Death) unranked; to rank Labor Trafficking (Great Bodily Harm) at severity level (SL) 9; to rank Labor Trafficking (Minor Victim) at SL 8; to rank Labor Trafficking (Extended Period of Time) at SL 7; to rank Labor Trafficking (other) at SL 6; to continue to list Labor Trafficking in section 6 (Offenses Eligible for Permissive Consecutive Sentences); and to continue to list Labor

Trafficking in section 8 (Severe Violent Offense List). All but the first two rankings in the motion were recommended by staff.

Commissioners Ladd and Larkin accepted a **friendly amendment** to rank Labor Trafficking (Death) at SL 10 and to divide from the motion the decision to list Labor Trafficking in sections 6 and 8. The amended motion is shown in Appendix 1's changes to Guidelines section 5 with respect to Minn. Stat. § 609.282.

As amended, **motion carried** on a 7–2 roll-call vote.

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

Voting “No” were commissioners Middlebrook and Schnell.

After some discussion, there was no motion to change the current placement of Labor Trafficking in section 6 (Offenses Eligible for Permissive Consecutive Sentences), thereby leaving the restructured Labor Trafficking offense on the list.

Motion by Commissioner Middlebrook and second by Commissioner Knutson to list all forms of Labor Trafficking except the SL 6 offense in section 8 (Severe Violent Offense List), as shown in Appendix 1's changes to Guidelines section 8 with respect to Minn. Stat. § 609.282.

The Commission discussed the motion. The maker of the motion opined that the SL 6 offense does not meet the threshold for being on the list.

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

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

Director Reitz reminded the Commission that today's actions were not understood to be final, and that all motions to change the Sentencing Guidelines were understood to be motions to propose such changes for consideration at the public hearing to be held July 20, 2023.

2. Robbery – New Carjacking Offense Specified

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Schnell and second by Commissioner Middlebrook to adopt staff recommendations to rank carjacking in the first, second, and third degrees at SL 8, SL 6, and SL 5, respectively; to list Carjacking in section 6; and to list Carjacking 1st Degree in section 8. This motion is shown in Appendix 1's changes to Guidelines sections 5, 6, and 8 with respect to Minn. Stat. §§ 609.245 and 609.247.

The Commission discussed the motion. A commissioner questioned whether the creation of the offense was a signal from the Legislature to treat carjacking more seriously than robbery.

Another commissioner talked about how serious an offense it was and how it takes victims time to recover from it. Another commissioner recognized the seriousness of carjacking but also saw

the seriousness of all robberies and discussed how the legislative intent appeared to be to make distinctions between carjacking and robberies for tracking purposes.

Motion carried on a 7–2 roll-call vote.

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

Voting “No” were commissioners Ibrahim and Larkin.

3. Kidnapping – Aggravating Circumstances Numbered

Director Reitz described the offense and staff recommendation, noting that there were no substantive changes to the law, that these were conforming changes, and that the staff recommendations were “status quo.”

Motion by Commissioner Middlebrook and second by Commissioner Knutson to adopt staff recommendations to make conforming and editorial changes related to the enumeration of kidnapping’s aggravating circumstances, as shown in Appendix 1’s changes to Guidelines sections 5 and 8 with respect to Minn. Stat. § 609.25.

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

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

4. Fictitious Emergency Call – New Offense Level

Director Reitz described the offense and staff recommendation. A commissioner asked a clarifying question.

Motion by Commissioner Ibrahim and second by Commissioner Schnell to adopt the staff recommendations with respect to Minn. Stat. § 609.78, including ranking Fictitious Emergency Call (Substantial Bodily Harm) at SL 4.

The Commission discussed the motion. Some commissioners thought SL 4 was too high given this conduct seemed like a prank phone call and that the behavior was not as serious as the underlying conduct of fleeing a peace officer.

Commissioners Ibrahim and Schnell accepted a **friendly amendment** to rank Fictitious Emergency Call (Substantial Bodily Harm) at SL 3. The amended motion is shown in Appendix 1’s changes to Guidelines sections 5 and 6 with respect to Minn. Stat. § 609.78.

As amended, **motion carried** unanimously on a 9–0 roll-call vote.

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

5. Organized Retail Theft – New Crime

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Larkin and second by Commissioner Ladd to adopt the staff recommendations to rank Organized Retail Theft (Over \$5,000) at SL 4; to rank Organized Retail Theft (\$1,001–\$5,000, or \$501–\$1,000 and Prior Convictions) at SL 3; and to rank Organized Retail Theft (\$501–\$1,000, or \$500 or Less and Prior Convictions) at SL 1, as shown in Appendix 1’s changes to Guidelines section 5 with respect to Minn. Stat. § 609.522.

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

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

6. Burglary – New Offenses for Shoplifting Contrary to a Trespass Notice

Director Reitz described the offense and staff recommendation.

The Commission discussed the new crime and asked clarifying questions.

Motion by Commissioner Middlebrook and second by Commissioner Moore to rank Burglary 3rd Degree (Shoplifting Contrary to Trespass Notice, 2nd or Subsequent) at SL 3 and to direct staff to make appropriate conforming and editorial changes. This motion is shown in Appendix 1’s changes to Guidelines section 5 with respect to Minn. Stat. § 609.582.

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

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

7. Machine Gun, Trigger Activator, or Conversion Kit – Quadrupled Statutory Maximum Penalty

Director Reitz described the offense and staff recommendation.

The Commission discussed the new crime. One Commissioner observed that the quadrupling of the statutory maximum may be as a signal from the Legislature of how serious the crime is and the potential for mass casualty from such a device.

Motion by Commissioner Moore and second by Commissioner Ibrahim to adopt staff recommendations to rank Machine Gun, Trigger Activator, or Conversion Kit at SL 8 and make related conforming changes, as shown in Appendix 1’s changes to Guidelines section 5 with respect to Minn. Stat. § 609.67.

Members discussed the comparative ranking for Felon in Possession of a Firearm, noting that offense’s five-year mandatory minimum.

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

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

The Chair called a brief recess beginning at 3:11 p.m.

Chair Mitchell called the meeting back to order at 3:19 p.m.

8. Interference with Privacy – New Enhanceable Offenses

Director Reitz described the offenses and staff recommendations for ranking them. Chair Mitchell asked the Commission to address the ranking decisions separately from the decision on listing the offense in section 6.

The Commission discussed the existing offense that was renumbered that involved a “minor victim and sexual intent.”

Motion by Commissioner Schnell and second by Commissioner Morath to rank Surreptitious Photography Under or Around Clothing (3rd or Subsequent Violation) at SL 3 and to adopt staff recommendations to make conforming and editorial changes, as shown in Appendix 1’s changes to Guidelines section 5 and Appendix 3 with respect to Minn. Stat. § 609.746.

Motion carried on a 7–2 roll-call vote.

Voting “Yes” were Chair Mitchell and commissioners Ibrahim, Knutson, Middlebrook, Moore, Morath, and Schnell.

Voting “No” were commissioners Ladd and Larkin.

The Commission next discussed the permissive-consecutive sentencing staff recommendations, which were to add the Interference with Privacy offenses ranked at SL 3 to, and maintain the Interference with Privacy offenses ranked at SL G on, the list.

Motion by Commissioner Moore and second by Commissioner Knutson to adopt staff recommendations to add Surreptitious Photography Under or Around Clothing (3rd or Subsequent Violation) to the list in section 6, and make conforming changes to keep Surreptitious Observation Device (Minor Victim and Sexual Intent) on the same list, as shown in Appendix 1’s changes to Guidelines section 6 with respect to Minn. Stat. § 609.746.

Motion carried on a 7–2 roll-call vote.

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

Voting “No” were Chair Mitchell and Commissioner Middlebrook.

9. False Statement to Obtain a Firearm Transferee Permit – Enhanced to Felony

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Middlebrook and second by Commissioner Schnell to adopt staff recommendations to rank False Statement to Obtain Firearm Transferee Permit at SL 1, as shown in Appendix 1's changes to Guidelines section 5 with respect to Minn. Stat. § 609.7131.

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

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

10. Money Transmitter Regulations – New Crime

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Schnell and second by Commissioner Ibrahim to adopt staff recommendations to rank Money Transmitter Regulations at SL 1, as shown in Appendix 1's changes to Guidelines section 5 with respect to Minn. Stat. § 53B.66.

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

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

11. Disseminating a Deep Fake Depicting Intimate Parts or Sexual Acts – New Crime

Director Reitz described the offense and staff recommendation.

The Commission asked questions and made comparisons between the new offense and "revenge porn," the offense upon which the new offense appeared to have been based.

Motion by Commissioner Schnell and second by Commissioner Knutson to adopt staff recommendations to rank Nonconsensual Dissemination of a Deep Fake Depicting Intimate Parts or Sexual Acts at SL 3, to list the offense in section 6, and to make an editorial change, as shown in Appendix 1's changes to Guidelines sections 5 and 6 with respect to Minn. Stat. §§ 617.261 & 617.262.

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

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

12. Using Deep Fake Technology to Influence an Election – New Crime

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Middlebrook and second by Commissioner Ibrahim to adopt staff recommendations to leave the crime of Using Deep Fake Technology to Influence an Election (2nd or Subsequent Violation) unranked, as shown in Appendix 1's changes to Guidelines section 5 with respect to Minn. Stat. § 609.771.

The Commission discussed the Guidelines' rationale for unranked offenses. At one point, a member expressed interest in ranking the offense, but reconsidered based on the full discussion.

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

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

13. Family and Medical Benefit Fraud – New Crime

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Larkin and second by Commissioner Moore to adopt staff recommendations to place the crime of Family and Medical Benefit Fraud on the Theft Offense List in section 7, resulting in a ranking of SL 3 for a monetary amount of over \$5,000, or a ranking of SL 2 for a monetary amount of \$5,000 or less, as shown in Appendix 1's changes to Guidelines sections 5 and 7 with respect to Minn. Stat. § 268B.185.

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

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

14. Cannabis Possession, Sale, and Cultivation – New Crimes

Director Reitz described the offense and staff recommendation.

Motion by Commissioner Schnell and second by Commissioner Knutson to adopt staff recommendations. Effective August 1, 2023, the motion was to rank the first-degree versions of cannabis possession, cannabis sale, and cannabis cultivation at SL D2, and to make conforming, corrective, and editorial changes related to failure to affix tax stamp crimes, controlled substance crime in the fifth degree, and sale of synthetic cannabinoids, as shown in Appendix 1's changes to Guidelines section 5 with respect to Minn. Stat. §§ 152.0263, 152.0264, 152.0265, 152.027, and 297D.09. Effective August 1, 2025, the motion was to strike references to medical cannabis violations, which are repealed in 2025, as shown in Appendix 2.

The Commission discussed the new offenses in relation to controlled substance crimes under Minn. Stat. Ch. 152. The Commission discussed the possibility of adding a comment or an appendix to help explain the new cannabis law. During discussion, staff was directed to create an appendix for the Guidelines using the table in the meeting materials. Because appendices are not part of the Guidelines, they do not need a public hearing review; therefore, staff will prepare an appendix for the Commission's approval at its meeting on July 27, 2023.

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

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

B. Making Conforming Changes to the Sentencing Guidelines (Action)

This was on the agenda as an action item.

Director Reitz presented (5B) “Conforming Changes to the Sentencing Guidelines,” dated June 5, 2023, which included staff recommendations for amendments to the 2022 Minn. Sentencing Guidelines and Commentary. The Commission discussed and took action, as follows.

1. Bias Crimes Expanded

Director Reitz described the conforming changes and staff recommendations.

Chair Mitchell suggested recommending that the statutory list of aggravating factors in Minn. Stat. § 244.10, subd. 5a, be repealed rather than trying to keep the list in in the Guidelines in sync.

Motion by Commissioner Schnell and second by Commissioner Morath to adopt staff recommendations to make conforming changes related to the expansion of bias crimes, as shown in Appendix 1’s changes to Guidelines section 2.D.3.b(11) and Comment 2.D.308.

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

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

2. Felony Redefined

Director Reitz described the conforming changes and staff recommendations.

Motion by Commissioner Knutson and second by Commissioner Ladd to adopt staff recommendations to make conforming, corrective, and editorial changes related to the redefinition of a felony, as shown in Appendix 1’s changes to Guidelines sections 2.B.2.c, 2.C.1, 2.G, & 4, and to comments 2.B.502, 2.E.02, & 2.F.103.

The Commission discussed how the amendments would affect out-of-state priors. One Commission member expressed concern.

Motion by Commissioner Larkin and second by Commissioner Middlebrook to **amend** the Knutson motion by striking, in Guidelines section 2.B.5.b, the phrase “that in Minnesota would be a felony-level sentence,” and by replacing the stricken phrase with the phrase “of 366 days or more,” as shown in Appendix 1’s changes to Guidelines section 2.B.5.b.

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

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

As amended, **Knutson motion carried** unanimously on a 9–0 roll-call vote.

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

3. Probation Lengths – Five Year Cap Codified

Director Reitz described the conforming changes and staff recommendations.

Motion by Commissioner Middlebrook and second by Commissioner Schnell to adopt staff recommendations to make conforming changes related to the codification of five-year probation lengths, as shown in Appendix 1’s changes to Guidelines sections 1.B & 2.D.1, and to section 3.A and associated commentary.

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

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

4. Targeted Misdemeanor List – Obscene or Harassing Telephone Calls Added

Director Reitz described the conforming changes and staff recommendations.

Motion by Commissioner Middlebrook and second by Commissioner Schnell to make no changes to the list in Guidelines Appendix 4 in light of the apparent typographical error in the statutory list’s change.

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

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

Next the Commission briefly discussed legislation in the document that, in staff’s opinion, did not require conforming Guidelines changes: 1. Minnesota’s “Truth in Sentencing” law; and 2. Community Supervision reform. The Commission took no action as a result of changes to these laws.

C. Other Laws of Interest to the Commission (Discussion)

This was on the agenda as a discussion item.

Item 5C “Other Laws of Interest to the Commission” was included in the meeting materials but not presented.

6. Executive Director’s Report (Discussion)

This was on the agenda as a discussion item.

Director Reitz reported on two items: the National Association of Sentencing Commissions (NASC) 2023 conference would be held August 7 to August 9, 2023, in Lake Tahoe, Nevada; new Commission appointments were forthcoming; and funding was approved for a new research supervisor position that will be posted soon.

Commissioner Moore asked for a review of the scope of the comprehensive review project given that it had been funded.

7. Public Input

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

Desiree Oakley, spoke about her son Josiah Oakley who was killed on December 11, 2022, in Minneapolis by an unlicensed motorist who was speeding, ran a red light, and had a blood-alcohol content that was three times the legal limit. Oakley said that prosecutors offered a 4-year plea deal to the defendant and told her it was the best that she could hope for because it was the Guidelines sentence. Oakley asked the Commission how a person who could take a life in such a reckless way could receive only a four-year sentence. Oakley said that sentencing was scheduled for July 3, 2023.

Chair Mitchell thanked Oakley for speaking and said that the item was not on the agenda for today and that the Commission was about to engage in a comprehensive review of the Guidelines. Chair Mitchell urged Oakley to put her thoughts in writing so that the Commission could reconsider this issue. Oakley said that she had previously written a letter to the Office of the Attorney General.

Commissioner Larkin thanked Oakley for her comments and said that this was not the first time the Commission has heard this criticism and that consequences are important.

8. Adjournment

The Commission having finished the business on its agenda, Chair Mitchell canceled the continuation meeting that had been scheduled for the following day, June 8, 2023. Chair Mitchell said that the public hearing on the proposed amendments would be on July 20, 2023, and the Commission would meet to take final action on July 27, 2023. Chair Mitchell reminded members that a quorum was required on July 27, 2023.

Chair Mitchell adjourned the meeting at 5:35 p.m., without objection.