

Approved Meeting Minutes

December 17, 2020

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on December 17, 2020. Due to the ongoing health pandemic and peacetime emergency, it was not feasible for members of the Commission or the public to attend at the regular meeting location in Saint Paul; instead, Commission members and members of the public participated by telephone or by electronic Webex meeting, the notice required by [Minn. Stat. § 13D.021](#), subd. 4, having been posted on the MSGC website on December 10, 2020.

Present electronically were Commission Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada, and Commission members Justice (Ret.) Christopher Dietzen, Abby Honold, Tonja Honsey, Kyra Ladd, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, Commander Salim Omari. Also present by telephone and/or electronically were Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland, Jill Payne, and Anne Wall.

Members of the public present by telephone and/or electronically included Alex Bunger, Minn. Department of Corrections; Rep. Matthew Grossell, Minn. House of Representatives; James Johnson; Kate Gilbertson; John Hultquist, Minn. House of Representatives Research Consultant, Republican Caucus; Robert Small, Minn. County Attorneys Association; and Ben Johnson, Minn. House of Representatives Research.

- 1. Call to Order & Roll Call** Chair Mitchell called the meeting to order at 1:11 p.m., immediately after adjournment of a public hearing.

Chair Mitchell explained that the meeting was being held by telephone and internet today as authorized by Minn. Stat. § 13D.021, which applied because an in-person meeting was not practical or prudent due to the health pandemic and peacetime emergency. Chair Mitchell explained that these conditions made it unfeasible for any member of the Commission or the public to attend at the regular meeting location in Saint Paul which, was then open only to authorized state employees. Chair Mitchell stated that for the reasons stated the meeting would be conducted entirely by telephone or internet and the notice had been posted on the MSGC website since December 10, 2020. Chair Mitchell stated that members of the public are able to monitor the meeting remotely by telephone or computer with instructions posted on the MSGC website.

Chair Mitchell asked Director Reitz to call the roll.

Present electronically were Commission Chair Kelly Lyn Mitchell, Vice-Chair Valerie Estrada, Justice (Ret.) Christopher Dietzen, Abby Honold, Tonja Honsey, Kyra Ladd, Judge Michelle Larkin, Judge Kevin Mark, Cathryn Middlebrook, and Commander Salim Omari. Ten members were present; one member was absent and excused. A quorum was present.

2. Approval of Agenda

This was on the agenda as an action item.

Motion by Judge Mark and second by Ms. Middlebrook to approve the meeting agenda.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, Justice Dietzen, Ms. Honold, Ms. Honsey, Ms. Ladd, Judge Larkin, Judge Mark, Ms. Middlebrook, and Commander Omari.

3. Approval of Draft Meeting Minutes

This was on the agenda as an action item.

Motion by Ms. Estrada and second by Judge Mark to approve the meeting minutes from November 5, 2020.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, Justice Dietzen, Ms. Honold, Ms. Honsey, Ms. Ladd, Judge Mark, Ms. Middlebrook, and Commander Omari. There was no reply from Judge Larkin.

4. Potential Recommendations to the Legislature

This was on the agenda as an action item.

Director Reitz discussed the staff issue paper entitled, “Potential Recommendations to the Legislature.” Director Reitz stated that the staff-drafted potential recommendations included four topics that had been mentioned by one or more Commission members as possible recommendations to the Legislature, with no implication that the Commission, would, in fact, adopt any of the recommendations as drafted. Director Reitz explained the four draft recommendations: (1) to give immediate effect to the proposed modification clarifying criminal history calculation; (2) to review the child pornography definition for constitutionality; (3) to create a sexting exception to child pornography production; and (4) to transfer MSGC staff members to the state’s classified service.

With respect to the first potential recommendation, some Commission members expressed concerns about not only recommending to the Legislature that it give immediate effect to the proposed modification clarifying criminal history calculation, but with the proposed modification clarifying criminal history calculation itself. Some Commission members also voiced concerns with the current Minnesota Sentencing Guidelines policy 2.B.2. In the ensuing discussion, staff explained the mechanics of the four criminal history score factors. Members discussed the timeliness of the concerns being raised, as well as the ability, or not, of the Commission to put forward a new policy regarding custody status by the January meeting.

The Chair moved on to the other recommendations. The Chair asked members if there was a motion on any of the remaining recommendations. Commission members discussed waiting until the January meeting to decide whether to take action on draft recommendations one through three in the staff issue paper.

Motion by Ms. Middlebrook and second by Justice Dietzen to approve the fourth recommendation, as drafted by staff: to recommend, within the Report to the Legislature, that the Legislature transfer of MSGC staff members to the state's classified service.

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

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, Justice Dietzen, Ms. Honold, Ms. Honsey, Ms. Ladd, Judge Larkin, Judge Mark, Ms. Middlebrook, and Commander Omari.

Reasoning that the January 14 meeting was only one day before the report's due date, and that it would be easier to delete matter from the draft report than to add to it, Director Reitz expressed his editorial intent to add the unapproved recommendations to the Report to the Legislature, but highlighted to indicate that attention was needed. Commission members voiced no objections.

Various members also discussed adding to the Report to the Legislature a minority report, as well as language clarifying the majority's rationale. Director Reitz asked members to submit such proposed language by January 5, 2021, so staff could distribute the language to the Commission on January 7.

5. Draft 2021 Report to the Legislature

This was on the agenda as a discussion item.

Chair Mitchell called on Director Reitz, who reviewed parts of the Draft 2021 Report to the Legislature with the Commission and received editorial suggestions from Commission members.

A member asked if MSGC staff were able to keep track of the probation cap policy data and Director Reitz stated that staff are starting to track the data. Director Reitz asked if the Commission agreed that MSGC staff track the data and members stated no objections.

6. Sentencing Guidelines Neutrality Review Update

This was on the agenda as an information item.

Director Reitz stated that staff were currently working on the first prototype report on Sentencing Guidelines neutrality review for Commission members to review. Director Reitz explained the timeline and stated that MSGC staff will be looking for feedback on the report at the next meeting in January. Director Reitz specified that the Guidelines policies assessment, providing a staff assessment of the impact and ease of research of each policy, would likely be ready for the February Commission meeting.

7. Working Group/Task Force Reports

A. Criminal Sexual Conduct Statutory Reform Working Group

Chair Mitchell called on Director Reitz to give an update about the Criminal Sexual Conduct Statutory Reform Working Group. Director Reitz explained that he had not met with anyone since his last report. Director Reitz stated that he would get an update from the Criminal Sexual Conduct Statutory Reform Working Group regarding their possible Report to the Legislature before the next Commission meeting.

B. Community Competency Restoration Task Force

Chair Mitchell called the Commission member appointed to the Community Competency Restoration Task Force, Ms. Middlebrook, to discuss the task force. Ms. Middlebrook stated that the task force is in the process of finalizing their Report to the Legislature. Ms. Middlebrook explained that there is a meeting scheduled on January 6 to finalize the report. Ms. Middlebrook thanked staff for the information on disparities and probation revocations that she requested at the last meeting.

Chair Mitchell requested that the appointed members of the working group and task force summarize what findings might be going to the Legislature in case it impacts the Commission and the Commission's work in the future.

8. Executive Director's Report

Director Reitz reported that the 92nd Minnesota Legislature would convene on January 5, 2021, with a similar criminal-justice policy leadership structure: Senator Warren Limmer would be chairing the Senate Judiciary and Public Safety Finance and Policy Committee, and Rep. Carlos Mariani Rosa would be chairing the Public Safety and Criminal Justice Reform Finance & Policy Committee. Director Reitz explained that the Corrections subcommittee, which fell under the House Public Safety Committee in the 91st Minnesota Legislature, was apparently being eliminated.

Director Reitz reported that the Secretary of State had received four applications to fill the upcoming vacancy of Commander Omari's seat on the Commission, and that the Governor had not yet made an appointment. Director Reitz told members that a quorum would be required for the January 14, 2021, meeting.

9. Public Input

Chair Mitchell called upon any member of the public present who wished to speak. No member of the public spoke.

10. Adjournment

The meeting adjourned at 3:27 p.m., without objection.