

Approved Meeting Minutes

November 3, 2022

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on November 3, 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 Commission members Judge David Knutson, Judge Michelle A. Larkin, Cathryn Middlebrook, Justice Gordon L. Moore, Brooke Morath, and Commissioner of Corrections Paul Schnell. MSGC Executive Director Nate Reitz and staff members Shanna Mohabir and Jill Payne were also present in person. Two members of the public were present in person: David Zimmer, Center of the American Experiment; and Latonya Reeves, Hennepin County Probation.

Present by telephone and/or electronically were Commission members Tonja Honsey and Kyra Ladd, the notice required by Minn. Stat. § 13D.015 having been posted on the MSGC website on October 7, 2022. Also present by telephone and/or electronically were MSGC staff members Kathleen Madland, Linda McBrayer, and Anne Wall; and members of the public including Elizabeth Ruhland, Ellen McDaniel, Will Freeman, Christina Thompson, Angela Cook, Michelle Hipsag, and Leslie Rosedhal.

Before the meeting was called to order, Director Reitz announced to in-person participants that there were technical difficulties with the video for the meeting.

1. Call to Order and Roll Call

Chair Mitchell called the meeting to order at 1:07 p.m.

Director Reitz called the roll. Present were Chair Mitchell, Vice-Chair Estrada, and commissioners Honsey, Knutson, Larkin, Middlebrook, Moore, Morath, and Schnell. Nine members were present and two members were absent. A quorum was present.

2. Approval of Draft Meeting Agenda (Action)

This was on the agenda as an action item.

Motion by Commissioner Schnell and second by Commissioner Larkin to approve the November meeting agenda.

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

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

3. Approval of Draft Meeting Minutes from October 6, 2022 (Action)

This was on the agenda as an action item.

At 1:12 p.m., it was brought to Chair Mitchell’s attention that Commissioner Ladd was in attendance, but by telephone as a guest without the ability to unmute herself for roll call. Commissioner Ladd was elevated to a panelist and was able to fully participate in the remainder of the meeting.

Motion by Commissioner Middlebrook and second by Commissioner Larkin to approve the October 6, 2022, draft meeting minutes.

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

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

4. Review of Public Hearing Process (Discussion)

This was on the agenda as a discussion item.

Director Reitz explained the public hearing process saying that, if there are to be changes to the Sentencing Guidelines that go into effect August 1, 2023, there must be a public hearing beforehand. The public hearing requires a thirty-day notice period, and the notice must be published in the State Register. This timeline would require the Commission to make a proposal today if it wishes for it to go into effect in the 2023 Sentencing Guidelines. The public hearing would be held on December 15, 2022.

5. Guidelines Modifications Resulting from the Sex Trafficking Review (Action)

This was on the agenda as an action item.

Chair Mitchell said the Commission would only be considering changes related to the sex trafficking review today and that a possible review of prostitution offenses may be considered next year due to the Commission not being ready to vote on the issue and it not being an issue the Commission was required to investigate.

A. Whether to Replace the Aggravated Sex Trafficking Modifier with Severity Rankings

Director Reitz presented “Sample Draft Language to Rank Aggravated Sex Trafficking” dated August 29, 2022 (staff paper 5A1). The two options would rank Aggravated Sex Trafficking on the Sex Offender Grid in place of the 48-month sentence modifier that now exists. The two options were:

- Staff Recommendation: Rank Aggravated Sex Trafficking 1st Degree at Severity Level A and Aggravated Sex Trafficking 2nd Degree at Severity Level B (Highlighted in Yellow).
- Central Minnesota Human Trafficking Task Force Recommendation: Rank all Aggravated Sex Trafficking offenses at Severity Level A (Highlighted in Blue).

Director Reitz referenced the “Estimated Impact of Aggravated Sex Trafficking Proposals” dated October 12, 2022 (staff paper 5A2) saying that the estimated prison-bed impact would be an increase in five prison beds for the staff recommendation and an increase of 11 prison beds for the Central Minnesota Human Trafficking Task Force recommendation.

There was a brief discussion about the benefits of replacing the existing aggravated sex trafficking modifier with a severity ranking for both first- and second-degree sex trafficking.

Motion by Commissioner Larkin and second by Commissioner Knutson to advance to a public hearing the staff recommendation to abolish the aggravating sex trafficking modifier, substituting for it a ranking of first-degree aggravated sex trafficking at severity level A and second-degree aggravated sex trafficking at severity level B.

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

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

B. Whether to Classify Some Form of Sex Trafficking as Severe Violent Offenses

Chair Mitchell said that, at the October meeting, the Commission learned how offenses in the past were chosen to be on the Severe Violent Offenses list and, at that meeting, the Commission was given six staff-recommended options for classifying sex trafficking offenses as Severe Violent offenses. In October, there was the suggestion given by a Commission member to consider “option two” and “option three.” Director Reitz presented the staff paper entitled “Classifying Sex Trafficking as a Severe Violent Offense” dated September 29, 2022 (staff paper 5B1) and explained options 2 and 3 (listed in Table 2). Option 2 consisted of adding aggravated sex trafficking offenses that where there was an element of bodily harm, 181+ days of debt bondage, or forced services to the Severe Violent Offense List. Option 3 would be the same as option two but would also include all sex trafficking offenses against children (Sex Trafficking 1st Degree).

Motion by Commissioner Larkin and second by Commissioner Morath to advance to a public hearing adding Sex Trafficking 1st Degree, Aggravated Sex Trafficking 1st Degree; and Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services) to the Severe Violent Offense List as described in Option 3 of the staff paper.

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

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

6. Custody-Status Related Guidelines Modifications (Action)

Chair Mitchell called on Director Reitz to present two custody status proposals and the estimated impact for each proposal. Director Reitz referenced the first proposal, “Draft Language to Eliminate One-Half Custody Status Point” dated October 12, 2022 (staff paper 6A1) that would eliminate one-half

custody status point; and the second proposal, “Draft Language to Restore the Full Custody Status Point, with Special Requirements for Low-Level Custody Offenses” dated October 13, 2022 (item 6B1). Director Reitz also introduced the estimated prison-bed impact for both proposals. A Commission member spoke in favor of the second proposal that would restore the full custody status point, with special requirements for low-level custody offenses.

Motion by Commissioner Larkin and second by Commissioner Knutson to advance to a public hearing restoring the full custody status point, with special requirements for low-level custody offenses, as outlined in staff paper 6B1.

The Commission had a lengthy discussion about custody status. Commissioners expressed their concerns about restoring the full custody status point, with special requirements for low-level custody offenses and other Commissioners spoke in favor of the proposal.

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

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

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

7. Recommendations to the Legislature Resulting from the Sex Trafficking Review (Discussion)

This was on the agenda as a discussion item.

Director Reitz presented “Staff-Recommended Recommendations to the Legislature” (staff presentation 7A and staff paper 7B). Staff recommended that the Commission recommend the following statutory changes to the Legislature:

- Cross-referencing the sex-trafficking statute in the labor trafficking statute’s definitions of “debt bondage” and “forced labor or services”;
- Reconciling the age thresholds for prostitution by replacing “at least 13” with “at least 14” in the prostitution statute; and
- Either adding Aggravated First-Degree Witness Tampering to the statutory violent crime list, or replacing First-Degree Witness Tampering with Aggravated First-Degree Witness Tampering on that list.

Director Reitz stated that no action was necessary, but that if there were suggestions to let him know now so that they could be included in the draft of the Report to the Legislature.

Chair Mitchell suggested that, without objection, the Commission could act on this agenda item today or it could wait until the next meeting. There was a brief discussion about the three recommendations to the Legislature.

Motion by Commissioner Schnell and second by Commissioner Knutson to include the first two staff recommendations, cross-referencing the sex-trafficking statute in the labor trafficking statute’s definitions of “debt bondage” and “forced labor or services and reconciling the age thresholds for

prostitution by replacing “at least 13” with “at least 14” in the prostitution statute, in the 2023 Report to the Legislature.

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

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

A Commissioner stated that for the third staff recommendation it makes sense that the more severe of the two would be included when looking at First-Degree Witness Tampering and Aggravated First-Degree Witness Tampering.

Motion by Commissioner Schnell and second by Commissioner Moore to include the third staff recommendation, either adding Aggravated First-Degree Witness Tampering to the statutory violent crime list, or replacing First-Degree Witness Tampering with Aggravated First-Degree Witness Tampering on that list, in the 2023 Report to the Legislature.

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

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

8. Executive Director’s Report (Discussion)

This was on the agenda as a discussion item.

A. Annual Report to the Legislature Timeline

Director Reitz reported that the 2023 Report to the Legislature will be submitted on January 13, 2023, saying he would like to have the Report mostly complete by the December meeting, but changes may be made into January if needed. Director Reitz presented “2021 Felony Sentencing Case Volume” dated November 3, 2022 (staff presentation 8A), which showed the number of cases sentenced in 2021 was 14,429, which was up 25 percent from 2020. Director Reitz said staff would be giving a more in-depth data presentation at the December meeting.

B. Budget Change Items

Director Reitz presented a memorandum to the Commission regarding “Costs of MSGC-Requested FY24–25 Biennial Budget Change Items” dated October 17, 2022 (item 8B), explaining that the costs of the budget change items previously discussed, with detailed information related to information technology costs.

C. Term of Governor-Appointed Commission Members

Director Reitz explained that, other than the Chief Justice’s appointees and the Commissioner of Corrections, Commission appointments are coterminous with the Governor, meaning they end in January 2023. Director Reitz further explained that Commissioners serve until their successors are

appointed and that they must reapply if they want to continue to serve. Director Reitz announced that applications for appointment or reappointment were open, and the applications were located on the Minnesota Secretary of State's website.

D. December Meeting Location

Director Reitz said that the Public Hearing and the next Commission meeting were on December 14, 2022, and will be held in the State Capitol, Room G3. NOTE: The public hearing and meeting will actually be **December 15, 2022**; Director Reitz was looking at the 2023 calendar when he erroneously announced December 14.

9. Public Input

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

David Zimmer, a member of the public who was present in person said he was a retired Sheriff's Captain with the Hennepin County Sheriff's Office who was currently serving as a policy fellow with the Center of the American Experiment. Zimmer offered his comment on behalf of the Center of the American Experiment. He stated that the primary focus of the Commission should be public safety and the Commission has not shown that they are focused on the impact of crime on citizens. Chair Mitchell thanked Zimmer for his comment.

Michelle Hipsag, a victim, who was present by phone thanked David Zimmer and Judge Larkin for being advocates for victims of crime. She stated that victims are not being considered and that taxpayer money is being spent on crime prevention. Hipsag said that she will be attending the December meeting.

Vice-Chair Estrada acknowledged the experiences of victims and empathized. She expressed that she has heard many times from some commissioners and the public that victims are not being considered. Vice-Chair Estrada shared her story about being a victim of violent crime and that she thinks about victims when making decisions on policies. In her role as a probation officer on the Commission, she has worked with victims, families, and clients and watched them be reformed successfully. She also shared that she was concerned with policies the Commission passed that were fear-based saying that victims often want offenders to get help, and that some victims do not have the resources to voice their opinions to the Commission. Vice-Chair Estrada thanked the public for their comments but wanted them to remember to be compassionate.

Latonya Reeves, Hennepin County Probation Officer, who was present in person, said that she appreciated the comment made by Vice-Chair Estrada. Reeves shared her story about how the criminal justice system had impacted her children. She expressed that she sees her clients as people and they should not be judged. They deserve an opportunity to change and should be provided the resources to be successful. She also said she works with victims and understands where they are coming from. The goal is to ensure the clients get the help they need so they do not re-offend because everyone deserves a second chance. Reeves thanked the Commission and members of the public who spoke before her.

Chair Mitchell thanked the public members for their comments and asked if anyone else wished to speak. No other members of the public wished to make a public comment.

10. Adjournment

Chair Mitchell adjourned the meeting at 3:23 p.m., without objection.