A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 8, 2017, in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Commission Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Valerie Estrada, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, Commissioner of Corrections Tom Roy, and Yamy Vang.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Kathleen Madland, Brian E. Oliver, Jill Payne and Anne Wall.

Members of the public present included Ben Johnson, House Research; and Robert Small, Executive Director of the Minn. County Attorneys Association.

1. **Call to Order**

   Chair Dietzen called the meeting to order at 2:00 p.m.

2. **Approval of Agenda**

   This was on the agenda as an action item.

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

   **Motion carried** unanimously.

3. **Approval of Meeting Minutes**

   This was on the agenda as an action item.

   **Motion** by Ms. Vang and second by Mr. Orput to approve the meeting minutes from May 11, 2017.

   **Motion carried** unanimously.
4. Possible Guidelines Modifications Relating to New and Amended Crime Legislation

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz who introduced Possible Modifications to the Sentencing Guidelines, 2017 Regular Session and 1st Special Session Laws, saying that several crimes were created or amended by the laws of the 2017 Regular Session and 1st Special Session, and are subject to the Commission’s review. Director Reitz asked members to turn to page 3, where there were “Commission Decision Points” that could be used as a format for making motions to give public notice as to the intent of the Commission.

A member asked if the Commission had not given adequate public notice in the past, and whether this was the reason for “Commission Decision Points.” Director Reitz said that there was nothing wrong with the Commission’s past procedure; this was simply a suggestion for convenience.

Director Reitz described section A. “Amended Crime Laws Affecting the Guidelines,” saying that for the two amended offenses, taking the amendments into consideration, the Commission may decide if or how the offense should be re-ranked, if there should be any modifications to the permissive consecutive offense list, or if other related Guidelines modifications should be made.

Director Reitz described amended criminal damage to property saying that the law amends criminal damage to property in the first degree by inserting a new clause, numbered (2), applicable when the property damaged was a public safety motor vehicle, the defendant knew the vehicle was a public safety motor vehicle, and the damage to the vehicle caused a substantial interruption or impairment of public safety service or a reasonably foreseeable risk of bodily harm.”

Director Reitz said that staff recommended the Commission rank the amended damage to property (public safety motor vehicle) at Severity Level 3 alongside criminal damage to property (risk bodily harm). Executive Director Reitz said that staff also recommends that the Commission make technical modifications due to the renumbering of clauses within Minn. Stat. § 609.595, subd. 1; and that staff had no recommendation as to whether the offense should be added to the list in Section 6 (Offenses Eligible for Permissive Consecutive Sentences).

Motion by Judge Schellhas and second by Judge Lennon to move that the Commission give public notice of its intent to assign Damage to Property (Public
Safety Motor Vehicle) a severity level of 2; give public notice of its intent to make technical changes to accommodate the renumbering of the clauses of Minn. Stat. § 609.595, subd. 1; and not add Damage to Property (Public Safety Motor Vehicle) to the list of offenses eligible for permissive consecutive sentences.

In the ensuing discussion, the Commission discussed the public safety issues and the ranking in comparison to the existing offense involving reasonably foreseeable risk of bodily harm, ranked at a severity level of 3.

**Motion failed** on a 4-5 vote.

**Motion** by Commissioner Roy and second by Mr. Orput to move that the Commission give public notice of its intent to assign to the new felony offense of Damage to Property (Public Safety Motor Vehicle) a severity level of 3; give public notice of its intent to make technical changes to accommodate the renumbering of the clauses of Minn. Stat § 609.595, subd. 1; and not add Damage to Property (Public Safety Motor Vehicle) to the list of offenses eligible for permissive consecutive sentences, illustrated as follows:

**Section 5.A. Offense Severity Reference Table**

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)</td>
<td>609.595, subd. 1(1) &amp; (2)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Damage to Property (Service to Public, Over $1,000, Over $500 and Subsequent)</td>
<td>609.595, subd. 1(2)-(3), &amp; (4), &amp; (5)</td>
</tr>
</tbody>
</table>
### Section 5.B. Severity Level by Statutory Citation

* * *

<table>
<thead>
<tr>
<th>Statute Number</th>
<th>Offense Title</th>
<th>Severity Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.595 subd.1(1) &amp; (2)</td>
<td>Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)</td>
<td>3</td>
</tr>
<tr>
<td>609.595 subd. 1(2)(3)(4), &amp; (5)</td>
<td>Damage to Property (Service to Public, Over $1,000, Over $500 and Subsequent)</td>
<td>2</td>
</tr>
</tbody>
</table>

* * *

**Motion carried** on a 5-4 vote.

Director Reitz next described amended use of automated sales suppression devices: Under Minn. Stat. § 289A.63, subd. 12, a felony is established prohibiting the sale, purchase, installation, transfer, development, manufacture, or use of an automated sales suppression device, zapper, phantom-ware, or similar device knowing that the device or phantom-ware is capable of being used to commit tax fraud or suppress sales. Director Reitz said that the maximum penalty is five years. Director Reitz said that the fiscal note estimated minimal impact based on a severity level of 3.

Director Reitz said that the Guidelines considerations were that the existing felony tax evasion offenses under Minn. Stat. § 289A.63 also carry a five year statutory maximum, and that the Guidelines collectively entitle these offenses “Tax Evasion Laws,” and rank them at Severity Level 3.

Director Reitz said that a substantially similar crime had been in the 2016 tax bill, which had been vetoed due to an unrelated technical error. Anticipating the possibility of a 2016 special session, the Commission had provisionally reviewed the crime at its June 8, 2016, meeting, and had unanimously ranked the offense at Severity Level 3, contingent on the crime’s enactment into law.

Director Reitz said that staff recommended that, consistent with its 2016 action, rank Use of Automated Sales Suppression Devices under Minn. Stat. § 289A.63, subd. 12, at Severity Level 3, and do not add it to the list of offenses eligible for consecutive sentences. Director Reitz said that this ranking decision could be effected by making no changes to the Guidelines; the new offense of “Use of Automated Sales Suppression Devices” would simply be included within the existing offenses entitled “Tax Evasion Laws.”
A member asked Director Reitz’s if the existing felony Tax Evasion Laws had associated monetary values; the answer was no.

**Motion** by Commissioner Roy and second by Judge Lennon to move that the Commission give public notice of its intent to assign to the new offense of Use of Automated Sales Suppression Devices a severity level of 3, which is within the existing offense of Tax Evasion Laws, and therefore make no changes to sections 5.A and 5.B as a consequence of the new offense’s enactment.

In the ensuing discussion, a friendly amendment was offered by Judge Schellhas to amend the reference to “Tax Evasion Laws” by inserting “Felony” in front of the title; therefore making it clear that the severity level of 3 ranking pertained to felony offenses only. Director Reitz suggested that this may not be necessary because severity-level rankings in the Guidelines only apply to felonies. The friendly amendment was not incorporated into the motion.

**Motion carried** unanimously.

Executive Director Reitz noted that Use of Automated Sales Suppression Devices under Minn. Stat. § 289A.63, subd. 12, would not be added to the list of offenses eligible for permissive consecutive sentences because that was not part of the above motion.

Director Reitz described section B. “New Crime Laws Affecting the Guidelines,” saying that for the one new offense, the Commission must consider whether to assign a severity-level ranking and to consider whether it should be added to the list of offenses eligible for permissive consecutive sentences.

Director Reitz described the newly created impersonating a peace officer under Minn. Stat. § 609.4751, saying that the existing misdemeanor prohibition against impersonating a peace officer is moved from Minn. Stat. § 609.475 (2016) to subdivision 1 of a newly codified Minn. Stat. § 609.4751, where it remains a misdemeanor. Director Reitz said that it becomes a gross misdemeanor under subd. 2 if committed while gaining access to a public building or government facility not open to the public; while directing or ordering another person’s actions; or while using lights, sirens, or insignia identifying a vehicle as a law enforcement vehicle; and a felony under subd. 3 if committed within five years of a previous violation of the newly codified section.

Director Reitz said that the new offense had a statutory maximum of two years, and presented other offenses at Severity Level 1 to 3, with two-year statutory maximums.
Directory Reitz said that staff recommended the Commission rank the newly created felony offense of impersonating a peace officer at Severity Level 1 or 2, or leave it unranked.

**Motion** by Judge Schellhas and second by Commissioner Roy to move that the Commission give public notice of its intent to assign Impersonating a Peace Officer a severity level of 2; add the offense of Impersonating a Peace Officer to Appendix 3 (Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table); and not add Impersonating a Peace Officer to the list of offenses eligible for permissive consecutive sentences, illustrated as follows:

**Section 5.A. Offense Severity Reference Table**

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Impersonating a Peace Officer</td>
<td>609.4751, subd. 3</td>
</tr>
</tbody>
</table>

**Section 5.B. Severity Level by Statutory Citation**

<table>
<thead>
<tr>
<th>Statute Number</th>
<th>Offense Title</th>
<th>Severity Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.4751, subd. 3</td>
<td>Impersonating a Peace Officer</td>
<td>2</td>
</tr>
</tbody>
</table>
Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

<table>
<thead>
<tr>
<th>Statute</th>
<th>Offense</th>
<th>Severity Level</th>
<th>Statutory Maximum (Months)</th>
<th>Exceeds Statutory Maximum At:</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.4751, subd. 3</td>
<td>Impersonating a Peace Officer</td>
<td>2</td>
<td>24</td>
<td>CHS 6 (upper-range)</td>
</tr>
</tbody>
</table>

In the ensuing discussion, the Commission discussed the public safety and public trust issues associated with the offense.

**Motion carried** on a 7-2 vote.

Director Reitz described section C. “Technical Amendments to Crime Laws Affecting the Guidelines,” saying that there was one statute revised that affected the Guidelines in which staff recommended making modifications. Director Reitz said that the headnote of Minn. Stat. § 268.182, which punishes, under Minn. Stat. § 609.52 (Theft), the obtaining of, attempting to obtain, or aiding or abetting one who obtains, unemployment benefits by false or fraudulent means, is changed from “APPLICANT’S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY” to “FRAUD; CRIMINAL PENALTY.”

**Motion** by Mr. Orput and second by Ms. Middlebrook to move that the Commission give public notice of its intent to change the offense title of “False Representations” to “Unemployment Benefit Fraud,” illustrated as follows:
Section 5.A. Offense Severity Reference Table

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>False Representations Unemployment Benefit Fraud (Over $5,000)</td>
<td>268.182</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>False Representations Unemployment Benefit Fraud ($5,000 or Less)</td>
<td>268.182</td>
</tr>
</tbody>
</table>

Section 5.B. Severity Level by Statutory Citation

<table>
<thead>
<tr>
<th>Statute Number</th>
<th>Offense Title</th>
<th>Severity Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>268.182</td>
<td>False Representations Unemployment Benefit Fraud (Over $5,000)</td>
<td>3</td>
</tr>
<tr>
<td>268.182</td>
<td>False Representations Unemployment Benefit Fraud ($5,000 or Less)</td>
<td>2</td>
</tr>
</tbody>
</table>

Section 7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes ($5,000 or less and over $5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- **Severity Level 2.** When the monetary value of the Theft Crime is $5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
• Severity Level 3. When the monetary value of the Theft Crime is over $5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

<table>
<thead>
<tr>
<th>Statute Number</th>
<th>Offense Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>176.178</td>
<td>Workers Compensation Fraud</td>
</tr>
<tr>
<td>256.98</td>
<td>Wrongfully Obtaining Assistance</td>
</tr>
<tr>
<td>268.182</td>
<td>False Representations, Unemployment Benefit Fraud</td>
</tr>
</tbody>
</table>

**Motion carried** unanimously.

5. **Technical Correction: Obsolete Cross-Reference in Comment 2.D.106**

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz who invited the Commission to recall that, at the May 11, 2017, meeting, this item was introduced and tabled for action at today’s meeting. Director Reitz said that there was an obsolete cross-reference to Comment 2.C.10 in Comment 2.D.106, and therefore it should be stricken.

Motion by Commissioner Roy and second by Judge Schellhas to move that the Commission give public notice of its intent to strike the cross-reference to Comment 2.C.10 in Comment 2.D.106, illustrated as follows:

**Section 2.D. Departures from the Guidelines**

**Comment**

2.D.106. The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and Comment 2.C.10). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and “revocation of a stay of adjudication” will be noted as the reason for departure, unless the court offers another explanation.
Motion carried unanimously.

6. Technical Correction: Remove “Annual” from Cover Page

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz who said that there was a notation on the cover page of the Guidelines indicates that the Guidelines “remain in effect until the next annual publication.” A reader may incorrectly infer that the Guidelines are invalid if updated more or less frequently than once per year. Director Reitz said that the staff recommended striking the word “annual” from the notation on the cover page consistent with Section 3.G, Minn. Stat. § 244.09, subd. 11, and Minn. R. 3000.0600.

Motion by Judge Lennon and second by Ms. Estrada to move that the Commission give public notice of its intent to strike the word “annual” from the notation on the cover page, illustrated as follows:

Minnesota Sentencing Guidelines and Commentary

| August 1 |
|---|---|
| 2017 |

These Sentencing Guidelines are effective August 1, 2016, and determine the presumptive sentence for felony offenses committed on or after the effective date. The Guidelines remain in effect until the next annual publication.

Motion carried unanimously.

7. Criminal History Score – Custody Status Point

This was on the agenda as a presentation and discussion item.

Chair Dietzen called on Senior Research Analysis Specialist Anne Wall who reviewed the four components of criminal history and said that today’s presentation would focus on the custody status point. Ms. Wall reviewed past and present custody status point policies and reported statistics on the percentage of people with a custody status point by race and ethnicity from 1991 to 2013; a breakdown of the custody status type assigned (probation, 79%; parole/supervised release, 12%; released pending sentencing, 4%; within original probation term, 3%; and Extended Jurisdiction Juvenile
custody status type assigned from 1991 to 2013; breakdown of the custody status type assigned by race and ethnicity; average pronounced length of sentence stays by offense types from 2002 to 2013; and excerpt slides from the Robina Institute and Study of Earned Compliance Credit.

Ms. Wall explained that, at future meetings, staff would like to review decay policies for each section of the Guidelines and answer the Commission's questions.

Chair Dietzen asked members to consider what other items related to criminal history it would like staff to explore.

8. Director's Report

Chair Dietzen called on Executive Director Reitz who reported on two items: 1) the Commission's staff will be relocating the office at the end of June 2017; and 2) the Commission's public hearing will be July 20, 2017; the follow-up meeting (which requires a quorum) will be July 27, 2017; and both meetings will be held in Room 1100 of the Senate office Building beginning at 2:00 p.m.

9. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak. No one came forward.

10. Adjournment

Motion by Commissioner Roy and second by Judge Lennon to adjourn.

Motion carried unanimously.

The meeting was adjourned at 3:34 p.m.