Approved Meeting Minutes

June 7, 2018

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 7, 2018, in the Centennial Office Building, Lady Slipper Conference Room, 658 Cedar St., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Vice-Chair Judge Heidi Schellhas, and Commission members Angela Champagne-From, Valerie Estrada, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, Yamy Vang, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Nicole Jasperson, Kathleen Madland, Jill Payne and Anne Wall.

Members of the public present were Kelly Mitchell, Robina Institute; Lisa Netzer, Minn. Department of Corrections; Lars Negstad, ISAIAH MN; Rachel English, Jewish Community Action; and Robert Small, Minn. County Attorneys Association.

1. Call to Order
   
   Chair Dietzen called the meeting to order at 1:30 p.m.

2. Approval of Agenda
   
   This was on the agenda as an action item.

   Motion by Judge Lennon and second by Vice-Chair Schellhas to approve the meeting agenda.

   Motion carried unanimously.

3. Approval of Draft Meeting Minutes
   
   This was on the agenda as an action item.

   Motion by Judge Wernick and second by Ms. Middlebrook to approve the meeting minutes from May 10, 2018.

   Motion carried unanimously.

4. Possible Modifications to the Sentencing Guidelines Relating to Crime Laws
   
   This was on the agenda as an action item.
Chair Dietzen called on Executive Director Reitz, who introduced a staff issue paper on possible modifications to the Sentencing Guidelines Relating to 2018 Regular Session Laws.

A. New Crime Law Affecting the Guidelines

Executive Director Reitz explained that there was one new offense, unauthorized computer access (electronic terminal), that was created within the existing crime of unauthorized computer access under Minn. Stat. § 609.891, and that the Commission must review it and may decide on assigning a severity level, adding the offense to the list in Section 6 (Offenses Eligible for Permissive Consecutive Sentences), and making conforming modifications to the Guidelines.

Director Reitz described the new gross misdemeanor and felony:

Gross misdemeanor. Effective August 1, 2018, under this law, a person who intentionally and without authorization attempts to, or does, penetrate an electronic terminal by accessing, or attempting to access, the electronic terminal by the unauthorized opening of a panel or access door is guilty of a gross misdemeanor. (An “electronic terminal” is defined as “an electronic device, other than a telephone operated by a consumer, through which an individual or company may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, cash dispensing machines, and gas pump dispensers.”)

Felony. The gross misdemeanor becomes a felony if the person also places or attaches, or attempts to place or attach, an electronic device to capture, store, or communicate access device information. (An “access device” is defined as a transaction card that may be used to access either an account, prepaid funds, or government benefits.)

Director Reitz also discussed the existing felony offense of Unlawful Possession or Use of Scanning Device or Reencoder, a Severity Level 2 offense codified within the Identity Theft statute. Other than its requirement of opening an electronic terminal’s panel or access door, the elements of the new offense are very similar to those of the existing offense.

First, the Commission discussed assigning a severity level to the new offense.

Motion by Vice-Chair Schellhas and second by Ms. Middlebrook to move that the Commission give public notice of its intent to assign the new offense of Unauthorized Computer Access (Electronic Terminal) a Severity Level 2 and make resulting technical modifications to Minn. Sentencing Guidelines §§ 5.A and 5.B, as shown below.

The Commission discussed the motion.

Motion carried on a 5 to 4 vote.
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>Unauthorized Computer Access (Electronic Terminal)</td>
<td>609.891, subd. 2(c)</td>
</tr>
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</table>

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<tr>
<th>Severity Level</th>
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<tbody>
<tr>
<td>UNRANKED</td>
<td>Unauthorized Computer Access (Grave Risk or Subsequent)</td>
<td>609.891, subd. 2(a) &amp; (b)</td>
</tr>
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Section 5.B. Severity Level by Statutory Citation

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Second, the Commission discussed whether to add the offense to the list of Offenses Eligible for Permissive Consecutive Sentences.

Motion by Commissioner Roy and second by Ms. Vang to move that the Commission give public notice of its intent to add the offense to the list of Offenses Eligible for Permissive Consecutive Sentences in Minn. Sentencing Guidelines § 6, as shown below.

The Commission discussed the motion.

Motion carried on a 5 to 4 vote.
**Section 6. Offenses Eligible for Permissive Consecutive Sentences**

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**B. Technical Amendment to Crime Law Affecting the Guidelines**

Director Reitz explained that, as part of the Revisor’s bill, technical amendments were made to Minn. Stat. § 152.021, subd 2a, removing obsolete paragraph references but making no changes to the statutory text, and that staff recommended making modifications due to this technical amendment.

**Motion** by Judge Lennon and second by Ms. Vang to move that the Commission give public notice of its intent to delete reference to paragraph (a) of Minn. Stat. § 152.021, subd. 2a, in Minn. Sentencing Guidelines §§ 5.A, 5.B, 6, as shown below.

**Motion carried** unanimously.

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

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<td>D9</td>
<td>Manufacture Any Amount of Methamphetamine</td>
<td>152.021, subd. 2a(a)</td>
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**Section 5.B. Severity Level by Statutory Citation**

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C. New and Amended Crime Laws Not Directly Affecting the Guidelines

Director Reitz called the Commission’s attention to a section of the staff issue paper summarizing new and amended statutes passed during the 2018 Regular Session that may be of interest to the Commission, but for which no action was required.


This was on the agenda as a discussion item.

Chair Dietzen called on Director Reitz, who introduced a staff issue paper in the meeting materials that brought to the Commission’s attention a vetoed directive by the Legislature. The directive would have required that the Commission review and consider modifying child pornography offenses on the Sex Offender Grid in relation to similar crimes. Director Reitz explained that the directive was contained in Senate File 3656, an omnibus bill that passed both the Senate and the House; that the omnibus bill was vetoed by Governor Dayton; and that, while the directive could be construed as the will of the 90th Minnesota Legislature, it did not have the effect of law.

Chair Dietzen suggested that the Commission may wish to take up the issue at a later date when it had finished its work on criminal history scores. No member of the Commission present objected to this approach.

6. Possible Modifications to Criminal History Scores

This was on the agenda as a discussion item.

A. Severe Violent Offenders

Chair Dietzen called on Director Reitz, who said that Senior Research Analysis Specialist Anne Wall would report on this item. Ms. Wall referenced a staff issue paper in the meeting materials on a severe violent crime proposal that had been forwarded to staff for analysis. Ms. Wall said that the proposal would increase the weight assigned in the criminal history score (CHS) to an offense defined as a severe violent crime (SVC) provided that the current offense is a SVC; each prior SVC would receive a weight of 3.0, instead of the 1.5, or 2.0 points it currently receives.
The Commission discussed the proposal at length.

Chair Dietzen directed staff to report back at its next meeting on the following:

1) Report the prison bed and demographic impact if assault in the 2nd degree under Minn. Stat. § 609.222, subd. 1, and kidnapping-safe release under Minn. Stat. § 609.25, subd. 2(1), were removed from the SVC list. (This was supported by the Commissioners who first proposed the SVO proposal.)

2) Report the prison bed and demographic impact if the SVC list was limited to those listed at severity levels 8 through 11.

3) Report the prison bed and demographic impact if the SVC list was limited to those listed at severity levels 9 through 11.

4) Report the prison bed and demographic impact if the SVC list was weighted for those at severity levels 6 through 8 at 2.0 points instead of 3.0 points.

B. Draft Stakeholder Memo

Chair Dietzen called on Executive Director Reitz who presented an unapproved working draft of a memo to criminal justice stakeholders, intended to be distributed if approved at the July 26, 2018, meeting, requesting input on possible criminal history score policy modifications.

The Commission discussed the draft memo at length, during which it was requested that the next draft of the memo be expanded to include the Severe Violent Offender proposal and the criminal history modification scenarios that have been reviewed at previous meetings after they are refined at the July 26, 2018, meeting.

Chair Dietzen said that the memo dated June 4, 2018, from Mark Wernick to the Commission would be addressed by the Commission at its July 26, 2018, meeting as well.

C. Refined Criminal History Modification Scenarios

Chair Dietzen called on Director Reitz who said that Senior Research Analysis Specialist Anne Wall would report on this item. Ms. Wall referenced a staff issue paper in the meeting materials on refined proposals on custody status point and decay periods. Ms. Wall presented newly prepared tables 2B, 4B, 5B, 6B, and 7B that showed previously discussed proposals with detailed information of the impact by offense type and severity level.

7. Executive Director’s Report

This was on the agenda as an information item.

Chair Dietzen called on Director Reitz who reported on the following items.
MSGC staff and Department of Corrections’ Information Technology staff will, on July 24, 2018, release a new “criminal history report” product within the Electronic Worksheet System, allowing probation officers to initiate a summary of a person’s criminal history and report it to the court without specifying the conviction offense. This report is useful because probation officers can report on criminal history information early in the process, and later transfer that information to a pre-plea worksheet or sentencing worksheet (generated within the Electronic Worksheet System) if there is a conviction.

The Commission’s public hearing will be July 19, 2018, in the Minnesota Senate Building, Room 1100. The public hearing is an opportunity for the public to speak on the proposed modifications; no quorum is required.

The Commission’s next meeting will be July 26, 2018, also in the Minnesota Senate Building, Room 1100. Part of the meeting will be dedicated to approving or rejecting the proposed modifications; a quorum is therefore required.

Looking ahead, another unusual Commission meeting location will occur on October 11, 2018; that meeting will be held in Room G-3 of the State Capitol.

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

9. Commemoration of the 40th Anniversary of the Minnesota Sentencing Guidelines Commission
Chair Dietzen called on Director Reitz, who said that June, 2018, marked the 40th Anniversary of the first meeting of the Minnesota Sentencing Guidelines Commission. Director Reitz read a proclamation by Governor Mark Dayton proclaiming Thursday, June 7, 2018, as Minnesota Sentencing Guidelines Commission Day in the State of Minnesota.

Chair Dietzen congratulated the Commission.

10. Adjournment
Chair Dietzen called for a motion to adjourn.

    Motion by Ms. Middlebrook to adjourn.

    Motion carried unanimously.

The meeting was adjourned at 3:42 p.m.