

Minnesota Sentencing Guidelines Commission
Meeting Minutes
July 24, 2014

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on July 24, 2014, in Room 116C, Administration Building; 50 Sherburne Ave.; St. Paul, MN 55155. Commission members present were Vice-Chair and Justice Christopher Dietzen, Jason Anderson, Sergeant Paul Ford, Judge Carrie Lennon, DOC Commissioner Tom Roy, Judge Heidi Schellhas, Yamy Vang, and Sarah Walker. MSGC staff members present were Interim Executive Director Anne Wall and Jill Payne. Member of the public, Nathaniel J. Reitz, was also present.

1. Call to Order

Justice Christopher presided over the meeting in Chair Jeff Edblad's absence. Vice-Chair Dietzen called the meeting to order at 2:00 p.m.

2. Approval of Meeting Minutes from June 19, 2014

Motion to approve minutes was made by Judge Heidi Schellhas and seconded by Sarah Walker.

Motion carried.

3. Adopt Proposed Modifications to the 2014 Minn. Sentencing Guidelines and Commentary

Vice-Chair Dietzen asked Interim Executive Director Wall for a summary of last week's public hearing. Ms. Wall explained that the public hearing was held on July 17, 2014, at the State Capitol. One member of the public commented. Caroline Palmer, Law and Policy Manager at the Minnesota Coalition against Sexual Assault (MNCASA), spoke in support of the proposed modification to the Sentencing Guidelines for criminal sexual conduct in the fifth degree.

The Vice-Chair explained that there were a few different ways that the adoption of the modifications could be handled: A motion could be entertained for each section; or each item could be taken as a motion; or there could be one motion.

Commissioner Roy stated that he felt one motion to adopt the entire proposal outlined in the "Proposed Modifications to the Sentencing Guidelines and Commentary," would suffice because the public comments were minimal and appreciative and the proposal had been well vetted.

Motion to adopt the proposed modifications to the Minn. Sentencing Guidelines and Commentary, effective August 1, 2014, was made by Commissioner Tom Roy and seconded by Judge Heidi Schellhas.

Motion carried.

The adopted modifications were:

A. Legislative Modifications –Amended Offenses from the 2014 Legislative Session.

The following existing offenses were amended by the 2014 Legislature.

1. Amended Lawful Gambling Fraud (Minn. Stat. § 609.763).

Reference: [Minn. Session Laws, Chapter 240.](#)

Description: Gambling fraud was expanded to include anyone who: a) knowingly tampers with or attempts to alter a component or device used in the conduct or play of electronic pull-tabs or electronic linked bingo as authorized under chapter 349 or attempts to convert legal gambling into illegal gambling at an establishment licensed under chapter 340A; or b) has unauthorized possession of an electronic pull-tab device, an electronic linked bingo device, or other component used in electronic pull-tabs or electronic linked bingo as authorized under chapter 349.

Adopted Modifications: The Commission adopted a proposal to leave the offense unranked in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

2. Amended Fraudulent Finance Statements (Minn. Stat. § 609.7475).

Reference: [Minn. Session Laws, Chapter 306.](#)

Description: Fraudulent financial statements under Minn. Stat. § 609.7475 was amended to expand the list of victims for which the penalty would be enhanced from a gross misdemeanor to a felony. Under current law it is a gross misdemeanor to file or promote the filing of a record with the intent to harass or defraud another person. Under current law, the penalty is enhanced to a five-year felony if the person commits the offense with the intent to influence a juror; retaliate against a judicial officer, prosecutor, defense attorney, or officer of the court, because of that person's performance in a judicial proceeding; retaliate against a sheriff or deputy sheriff because of that person's performance of official duties; or retaliate against a county recorder because of that person's performance of official duties. The felony enhancement list was expanded to include police officers, chiefs of police, and employees of the Department of Corrections or a local correctional agency.

Adopted Modifications: The Commission adopted a proposal to leave the offense unranked in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

3. Amended Fifth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.3451).

Reference: [Minn. Session Laws, Chapter 270.](#)

Description: Fifth-degree criminal sexual conduct offenses were amended in the following manner: a) Minn. Stat. § 609.135, subdivision 2, raised the length of stay for convictions of gross misdemeanor fifth-degree CSC from two years to six years; b) the statutory maximum for felony fifth-degree CSC was raised from five years to seven years; and c) the definition of prior offenses that elevate a fifth-degree CSC offense to a felony to include: anyone who has two previous convictions for gross misdemeanor fifth-degree CSC, a felony provision of

indecent exposure (Minn. Stat. § 617.23), any first- through fourth-degree CSC (Minn. Stats. §§ 609.342 to 345), criminal sexual predatory conduct (Minn. Stat. § 609.3453), and possession or dissemination of child pornography (Minn. Stat. § 617.247).

Adopted Modifications: The Commission adopted a proposal to re-rank fifth-degree CSC at Severity Level F in Minn. Sentencing Guidelines § 5, and keep fifth-degree criminal sexual conduct on the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 4.B. Sex Offender Grid.

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 4th Degree-- (a)(b)(e)(f); CSC 5th Degree: Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
		15	20	25	30	39 34-46	51 44-60	60 51-60 ²
<i>CSC 5th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct²</i>	G							

Modification to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
<u>F</u>	<u>Criminal Sexual Conduct 5th Degree</u>	<u>609.3451, subd. 3</u>
G	Criminal Sexual Conduct 5th Degree	609.3451, subd. 3

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree	F
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree	G

4. Amended List of Crimes of Violence (Minn. Stat. § 624.712).

Reference: [Minn. Session Laws, Chapter 260.](#)

Description: The list of crimes of violence contained in Minn. Stat. § 624.712, was expanded to include felony assault in the fifth degree under Minn. Stat. § 609.224, subd. 4; felony domestic assault under Minn. Stat. § 609.2242, subd. 4; and domestic assault by strangulation under Minn. Stat. § 609.2247. A person convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2).

Three offenses that were on the list of crimes of violence were removed: motor vehicle theft; theft from an abandoned, burning, or vacant building or from an area of destruction caused by civil disaster, riot, bombing or the proximity of battle; and third-degree burglary.

Adopted Modifications: The Commission adopted a proposal to leave the offense of prohibited persons from possession of a firearm under Minn. Stat. § 609.165 and Minn. Stat. § 624.713, subd. 1(2), ranked at Severity Level 6 in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

5. Amended Accidents (Minn. Stat. § 169.09; §609.21).

Reference: [Minn. Session Laws, Chapter 186.](#)

Description: Terminology changed from “accident” to “collision” in Minn. Stat. § 169.09 for accidents and in Minn. Stat. § 609.21 for criminal vehicular homicide.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

6. Amended Predatory Offender Registration (Minn. Stat. § 243.166).

Reference: [Minn. Session Laws, Chapter 259.](#)

Description: The statute requiring predatory offenders to register was amended to clarify that offenders must register if they commit any prostitution offense involving a minor under Minn. Stats. §§ 609.322 or 344. It also provides that offenders who are civilly committed

under Minn. Stat. § 253B.185 are required to register, as well as those committed under Chapter 253D.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

7. Amended Third-Degree Criminal Sexual Conduct (§ 609.344).

Reference: [Minn. Session Laws, Chapter 259.](#)

Description: Third-degree criminal sexual conduct (CSC) under Minn. Stat. § 609.344 was amended to move an offense with a five-year statutory maximum from the definition section into the penalty section. The general statutory maximum for third-degree CSC is 15 years. However, if the person was convicted under subdivision 1, paragraph b, and was at least 24 months older than the complainant, but not more than 48 months older, the statutory maximum is five years. The penalties are now separated into two distinct paragraphs in the penalty section.

Adopted Modifications: The Commission adopted a proposal to rank third-degree CSC under subdivision 1, paragraph b at Severity Level G in Minn. Sentencing Guidelines § 5, and to keep the offense on the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 4.B. Sex Offender Grid.

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 2nd Degree--(a)(b)(g)</i> <i>CSC 3rd Degree--(a)(b)²(e)(f)</i> <i>or(b)with ref. to subd. 2(1)</i> <i>Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60	70	91	119	140
				51-72	60-84	78-109	102-142	119-168

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 3rd Degree--(b)with subd. 2(2); Indecent Exposure</i> <i>Possession of Child Pornography;</i> <i>Solicit Children for Sexual Conduct</i> ²	G	15	20	25	30	39	51	60
						34-46	44-60	51-60 ²

Modifications to Section 5.A. Offense Severity Reference Table

Severity Level	Offense Title	Statute Number
D	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(a) (b) (e)(f) or subd. 1(b) with ref. to subd. 2(1)
<u>G</u>	<u>Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)</u>	<u>609.344, subd. 1(b) with ref. to subd. 2(2)</u>

Modifications to Section 5.B. Severity Level by Statutory Citation

Statute Number	Offense Title	Severity Level
609.344, subd. 1(a) (b) (e)(f) or subd. 1(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
<u>609.344, subd. 1(b) with ref. to subd. 2(2)</u>	<u>Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)</u>	<u>G</u>

8. Amended Criminal Vehicular Homicide and Operation (Minn. Stat. §§ 609.21; 2113; 2114).

Reference: [Minn. Session Laws, Chapter 180.](#)

Description: Mostly technical amendments were made to § 609.21, separating language for criminal vehicular homicide (CVH) from language for criminal vehicular injury (CVI) and arranging CVI offenses by level of harm. Subdivision 1 now pertains only to criminal vehicular homicide and subdivision 1a pertains to great bodily harm.

The amendment created a new Minn. Stat. § 609.2113, Criminal Vehicular Operation; Bodily Harm, which addresses criminal vehicular operations resulting in substantial bodily harm (subdivision 1) and bodily harm (subdivision 2).

Offenses involving harm to unborn children are now addressed in a new statute, Minn. Stat. § 609.2114, Criminal Vehicular Operation; Unborn Child. Subdivision 1 of this new section describes criminal vehicular operation resulting in death to an unborn child. Subdivision 2 describes criminal vehicular operation resulting in injury to an unborn child.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6. The modifications are outlined below.

Modifications to Section 2.B.3.g.

* * *

g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or 609.21, 609.2113, or 609.2114~~ two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes.

* * *

***2.B.304.** The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first-degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or 609.21, 609.2113, or 609.2114~~ are also more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations....*

Modifications to Section 5.A. Offense Severity Reference Table.

* * *

Severity Level	Offense Title	Statute Number
8	Criminal Vehicular Homicide or Operation (Death)	609.21, subd. 1a(a)
<u>8</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>609.2114, subd. 1</u>
5	Criminal Vehicular Homicide or Operation (Great Bodily Harm)	609.21, subd. 1a(b)
<u>5</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>	<u>609.2114, subd. 2</u>
3	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)	609.2113, subd. 1a(c)

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
609.21, subd. 1a(a)	Criminal Vehicular Homicide or Operation (Death)	8
609.21, subd. 1a(b)	Criminal Vehicular Homicide or Operation (Great Bodily Harm)	5
609.2113, subd. 1a(c)	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)	3
<u>609.2114, subd. 1</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>8</u>
<u>609.2114, subd. 2</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>	<u>5</u>

Modifications to Section 6. Offenses Eligible for Permissive Consecutive Sentences.

Statute Number	Offense Title
609.21, subd. 1a(a)	Criminal Vehicular Homicide (Death)
609.21, subd. 1a(b)	Criminal Vehicular Homicide or Operation (Great Bodily Harm)
609.21 <u>13</u> , subd. 1a(c)	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)
<u>609.2114</u> , subd. 1	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>
<u>609.2114</u> , subd. 2	<u>Criminal Vehicular Operation (Injury to an Unborn Child)</u>

9. Amended Criminal Record Expungement (Minn. Stat. § 609A.20).

Reference: [Minn. Session Laws, Chapter 246](#).

Description: Laws related to the expungement of criminal records were amended to allow the court to expunge juvenile arrest and delinquency proceedings if it determined that the expungement would benefit the subject and the benefit would not be detrimental to public safety. Business screening services were ordered to delete criminal records if it was known that the record had been sealed, expunged, or was the subject of a pardon. The eviction law was amended giving the court authority to expunge actions in which the defendant prevailed without an additional action required.

Certain records will be automatically expunged without filing a petition when the prosecutor agrees unless the court finds that it would be detrimental to public safety. The law requires court administration to notify the petitioner of entities receiving the expungement order. Those entities are then required to send a letter to the petitioner confirming that the record was expunged.

The circumstances under which a person may petition to have his or her criminal record expunged were expanded to a petitioner who 1) successfully completed a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of the program or stay of adjudication; 2) was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence; 3) was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years since discharge of the sentence; or 4) was convicted of or received a stayed sentence for certain felony offenses and has not been convicted of a new crime for at least five years since discharge of the sentence.

Expungement orders effective on or after January 1, 2015, “may be opened, used or exchanged between criminal justice agencies *without a court order* for purposes of initiating, furthering or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services.” Ex parte orders are necessary until that time.

Adopted Modifications: The Commission adopted a proposal to modify the commentary to clarify the procedures for the use of expunged records for sentencing purposes before January 1, 2015 and on or after January 1, 2015, as outlined below.

Modifications to Section 2.B.

2.B.03. Effective before January 1, 2015, Minn. Stat. § 609A.03, subd. 7(b) applies to expungement orders subject to its limitations, and provides that:

Notwithstanding the issuance of an expungement order:

(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;

. . .

Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph...

Effective January 1, 2015, Minn. Stat. § 609A.03, subd. 7a(b) provides that:

Notwithstanding the issuance of an expungement order:

(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correction services;

(2) when a criminal justice agency seeks access to a record that was sealed under section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information;

10. Amended Perjury (Minn. Stat. § 609.48).

Reference: [Minn. Session Laws, Chapter 180.](#)

Description: A new law related to court documents was enacted under Minn. Stat. § 358.166. The law states that a court document does not need to be notarized. Signing a document filed with the court constitutes “verification upon oath or affirmation.” A person who signs a court document knowing that it is false is guilty of perjury under Minn. Stat. § 609.48.

Adopted Modifications: The Commission adopted a proposal to maintain the existing severity level-rankings in Minn. Sentencing Guidelines § 5, and maintain the current list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

B. Legislative Modifications – New Medical Cannabis Offenses (Minn. Stat. § 152.33).

Reference: [Minn. Session Laws, Chapter 311.](#)

Description: New laws for medical use of cannabis were enacted by the Legislature during the 2014 Legislative Session which allowed state-licensed manufacturers to produce medical cannabis for patients with qualifying medical conditions. Criminal penalties for violations are provided in Minn. Stat. § 152.33.

Adopted Modifications: The Commission adopted the following severity-level rankings in Minn. Sentencing Guidelines § 5 for violations of the medical cannabis laws. The Commission adopted a proposal not to add medical cannabis violations to the list of eligible offenses for permissive consecutive sentencing in Minn. Sentencing Guidelines § 6.

Modifications to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
<u>2</u>	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>152.33, subd. 4</u>
<u>1</u>	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>152.33, subd. 1</u>
<u>1</u>	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>152.33, subd. 2</u>

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
<u>152.33, subd. 1</u>	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>1</u>

Statute Number	Offense Title	Severity Level
<u>152.33, subd. 2</u>	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>1</u>
<u>152.33, subd. 4</u>	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>2</u>

C. Non-Legislative Modifications

The following are non-legislative modifications to the Minn. Sentencing Guidelines.

1. Second Custody Status Point for Offenders Discharged Early from Probation.

Description: According to the Minn. Sentencing Guidelines § 2.B.2.b, an additional custody status point is assigned to an offender who was on custody status for a sex offense when they commit a sex offense. However, the Guidelines are unclear if a second point applies to an offender discharged early from probation under § 2.B.2.a(4).

Commission staff believed that this was an oversight; a result of the extensive Guidelines revisions that took effect August 1, 2012. The Commission's intent to assign a second Custody Status Point appeared clear in the 2011 Minn. Sentencing Guidelines, § 2.B.2.

Adopted Modifications: The Commission adopted a proposal to modify Minn. Sentencing Guidelines, § 2.B.2.b, to clarify that a sex offender committing an offense within the original length of probation qualifies for two custody points, as outlined below.

Modifications to Section 2.B.2.

b. Two Custody Status Points. Assign **two** custody status points if:

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (243.166);

(2) the offender qualifies for one custody status point, as described in section a, above, ~~was under any of the custody statuses in paragraph a(1)~~ for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).

2. General Rule for Determining a Severity Level.

Description: The Commission added definitions for the terms “Severity Level” and “Criminal History Score” in the definitions found in § 1.B.

Further, § 2.A.1, the general rule for assigning a severity level, described a situation in which multiple convictions lead to the assignment of only one severity level. This language is intended to address the situation in which an offender is convicted of two or more felony offenses arising from the same behavioral incident. But it incorrectly stated that the severity level is determined by the most severe conviction offense when instead the court should sentence the most serious offense and then use the severity level assigned to that offense.

Adopted Modifications: The Commission adopted a proposal to modify the Minn. Sentencing Guidelines, by adding a definition for the terms “severity level” and “criminal history score” to section 1.B, moving language from the general rule for severity level application to the definition, and moving the information referring to the most serious offense to a comment as described below.

Modifications to Section 1.B.

(Note: Inserted new paragraphs 4 and 17 and renumber subsequent paragraphs.)

B. Definitions

As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.

* * *

4. Criminal History Score. The “criminal history score” is comprised of criminal history factors detailed in section 2.B. The horizontal axis on the applicable grid represents the offender’s criminal history score.

* * *

17. Severity Level. The “severity level” is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Offenses listed within each severity level are deemed equally serious.

* * *

Modifications to Section 2.A.

1. General Rule. The applicable offense severity level is determined by the conviction offense, ~~not the charging offense. When an offender is convicted of two or more felonies,~~ the severity level is determined by the most severe conviction offense. Felony offenses, ~~other than sex offenses,~~ are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on a separate Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Offenses listed within each severity level are deemed to be equally serious. The severity level for each felony offense is governed by found in section 5A, Offense Severity Reference Table.

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Modifications to Section 2.A.

* * *

2.A.07. When an offender is convicted of two or more felony offenses arising from a single behavioral incident, Minn.Stat. § 609.035 “contemplates that a defendant will be punished for the ‘most serious’ of the offenses.” State v. Kebaso, 713 N.W.2d 317, 322 (Minn. 2006). When this occurs, the applicable severity level to use in determining the presumptive sentence is the severity level assigned to the offense being sentenced, which is ordinarily the most serious offense.

* * *

3. Conspiracy to Commit Crime for the Benefit of a Gang.

Description: Because there are two forms of conspiracy under state law – general conspiracy, which cuts in half the sentence duration, and conspiracy to commit a controlled substance offense, which does not impact the sentence – it was unclear whether the term “conspiracy” in § 2.G.10, was meant to refer to both. The Commission voted to clarify that the shorter sentence for benefit of a gang applied only to the general conspiracy statute under Minn. Stat. § 609.175. References to the attempt statute were also added and the section was rearranged to put the “victim under the age of eighteen” paragraph last because it was an exception.

Adopted Modifications: The Commission adopted a proposal to modify Minn. Sentencing Guidelines, section 2.G.10, as follows.

Modifications to Section 2.G.10.

* * *

10. Offense Committed for the Benefit of a Gang. When an offender is sentenced for an offense committed for the benefit of a gang under Minn. Stat. § 609.229, subd.

3(a):

a. Pursuant to Minn. Stat. § 609.229, subd. 4, the presumptive disposition is always commitment; and

b. The presumptive duration is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

(1) ~~If the victim of the crime was under the age of eighteen.~~ If the offense does not involve a victim or if the victim was eighteen or older:

(i) ~~24-12~~ months, if the underlying offense was completed; or

(ii) ~~12-6~~ months, if the underlying offense was an attempt under Minn. Stat. § 609.17 or conspiracy under Minn. Stat. § 609.175; or

(2) If the offense involves a victim was eighteen or older under the age of eighteen:

(i) ~~12~~ 24 months, if the underlying offense was completed; or

(ii) ~~6~~ 12 months, if the underlying offense was an attempt under Minn. Stat. § 609.17 or conspiracy under Minn. Stat. § 609.175.

* * *

4. Non-Minnesota Convictions.

Description: The current language in §2.B.5 does not emphasize the role that the court plays in equating non-Minnesota offenses to Minnesota offenses nor does it clearly outline the steps involved in equating a non-Minnesota offense.

Adopted Modifications: The Commission adopted a proposal to modify the language in § 2.B.5, as shown below.

Modifications to Section 2.B.5.

* * *

5. Convictions from Jurisdictions other than Minnesota.

- a. In General. ~~The offense definitions in effect when the offense was committed govern the designation of convictions from jurisdictions other than Minnesota as felonies, gross misdemeanors, or misdemeanors. The court must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score. The court should consider, but is not limited to, the factors in paragraphs b through e, below.~~ Sections 2.B.1 through 2.B.7 govern the use of these convictions.
- b. Offense Equivalent-How to Count. ~~Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The court makes the final determination of the Minnesota offense that is equivalent to the non-Minnesota offense. Where~~ The section in which to place count the non-Minnesota offense in criminal history depends on:
 - whether the non-Minnesota offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; and
 - the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

D. Technical Modifications

The following are technical modifications to the Minn. Sentencing Guidelines.

1. Presumptive Sentence Durations that Exceed the Statutory Maximum.

Description: Twelve offenses assigned severity level rankings in § 5 have presumptive durations that may exceed the statutory maximum depending on the offender's Criminal History Score. Practitioners will often use the Guidelines to determine the presumptive sentence without checking the statutory maximum in statute for the offense. If practitioners did not check the statute, these offenses may receive a sentence that would exceed the statutory maximum.

Adopted Modifications: The Commission adopted a proposal clarifying the policy by adding an appendix to the Guidelines highlighting the offenses for which this may occur, amending the footnotes on the grids, adding a reference in § 2.C.2, to the new appendix (Appendix 3), and adding footnotes to the applicable offenses in § 5.B, as it is used by practitioners to quickly locate the severity levels for offenses. The proposed modifications are outlined below.

Modifications to Section 2.C.

2. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence. If the presumptive sentence duration in the appropriate cell on the applicable Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence. See Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table in Appendix 3.

New Appendix 3:

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table.

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.2231 subd. 4(b)</u>	<u>Assault 4th Degree Motivated by Bias</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.322 subd. 1(a)</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree</u>	<u>B</u>	<u>240</u>	<u>CHS 5</u>
<u>609.352 subd. 2</u>	<u>Solicitation of Children to Engage in Sexual Conduct</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.352 subd. 2a</u>	<u>Solicitation of Children to Engage in Sexual Conduct (Electronic)</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.485 subd. 4(a)(2)</u>	<u>Escape, Mental Illness</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.485 subd. 4(a)(4)</u>	<u>Escape from Civil Commitment</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.595 subd. 1a(a)</u>	<u>Damage to Prop Motivated by Bias</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.597 subd. 3(3)</u>	<u>Assaulting or Harming Police Horse</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.662 subd. 2(b)(2)</u>	<u>Duty to Render Aid (Substantial Bodily Harm)</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.713 subd. 3(a)</u>	<u>Terroristic Threats-Replica Firearm</u>	<u>1</u>	<u>12, and 1 day</u>	<u>CHS 3</u>
<u>609.776</u>	<u>Interference with Emergency Comm.</u>	<u>5</u>	<u>36 months</u>	<u>CHS 4</u>
<u>617.247 subd. 3</u>	<u>Dissemination of Pictorial Representation of Minors</u>	<u>E</u>	<u>84 months</u>	<u>CHS 5</u>

Modifications to Section 5.B.

Statute Number	Offense Title	Severity Level
609.2231 subd. 4(b)	Assault 4th Motivated by bias	1**
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1 st Degree	B**
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G**
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G**
609.485 subd. 4(a)(2)	Escape, Mental Illness	1**
609.485 subd. 4(a)(4)	Escape from Civil Commitment	1**
609.595 subd. 1a(a)	Damage to Prop Motivated by Bias	1**
609.597 subd. 3(3)	Assaulting or Harming Police Horse	1**
609.662 subd. 2(b)(2)	Duty to Render Aid (SBH)	1**
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm	1**
609.776	Interference with Emergency Communications	5**

Statute Number	Offense Title	Severity Level
617.247 subd. 3	Dissemination of Pictorial Representation of Minors	E**

** See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

Modifications to Section 4.A. Sentencing Guidelines Grid.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Felony DWI</i>					54	60	66	72
<i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	46-64	51-72	57-79	62-84 ^{2,3}

³The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

2. Camping Contracts (Minn. Stat. §§ 82A.03; 13; 25).

Description: Registration requirements under Minn. Stat. § 82A.03 was removed as a criminal penalty from membership camping practices by the 2014 Legislature.

Reference: [Minn. Session Laws, Chapter 222.](#)

Adopted Modifications: The Commission adopted a proposal to delete reference to Minn. Stat. 82A.03, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
Unranked	Sale of Membership Camping Contracts	82A.03;82A.13; 82A.25

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
82A.03;82A.13; 82A.25	Sale of Membership Camping Contracts	Unranked

3. Rank Fraudulent Instrument or Entry for Procuring a Certificate of Title (Minn. Stat. § 508.80).

Reference: [1905 Laws of MN.](#)

Description: Fraudulently procuring a certificate of title under Minn. Stat. 508.80 is a felony with a 5-year statutory maximum. It has been inadvertently left unranked in the Guidelines. The law has been in effect since 1905.

Adopted Modifications: The Commission adopted a proposal to rank the offense at Severity Level 1, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
<u>1</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>508.80</u>

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
<u>508.80</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>1</u>

4. Pipeline Safety (Minn. Stat. § 299J).

Reference: [1987 Laws of MN.](#)

Description: The Guidelines list felony failure to report emergency release by a pipeline operator under Minn. Stat. § 299J.07, in the Guidelines. The offense has a 7-year statutory maximum. It is an unranked offense; however, another pipeline safety offense exists under Minn. Stat. § 299J.15: improper disposal of a pipeline, which has a 5-year statutory maximum.

Adopted Modifications: The Commission adopted a proposal to change the reference in Guidelines § 5A and 5B for pipeline safety to reference the entire chapter of 299J, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
Unranked	Pipeline Safety	299J.07, subd. 2

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
299J.07, subd. 2	Pipeline Safety	Unranked

5. Animal Fighting (Minn. Stat. § 343.31).

Description: Felony animal fighting, under Minn. Stat. § 343.31, is an unranked offense in the Guidelines. The citation in §§ 5A and 5B are incorrect. The statute was amended in 2005 and the felonies were moved to subdivision 1, paragraph (a).

Reference: [2005 Laws of MN.](#)

Adopted Modifications: The Commission adopted a proposal to correct the reference in Guidelines §§ 5A and 5B, as outlined below.

Modifications to Section 5.A. Offense Severity Reference Table.

Severity Level	Offense Title	Statute Number
Unranked	Animal Fighting	343.31 <u>subd. 1</u> (a){b}

Modifications to Section 5.B. Severity Level by Statutory Citation.

Statute Number	Offense Title	Severity Level
343.31 <u>subd. 1</u> (a){b}	Animal Fighting	Unranked

4. Public Input

Commissioner Roy asked incoming Executive Director Nathaniel J. Reitz his impressions of the new job so far. Mr. Reitz stated that his official start date was August 1, 2014, and he looked forward to learning his new role and working with the Commission and staff. He thanked Interim Executive Director Anne Wall for her work during the transition. Mr. Reitz said that he was looking forward to attending the conference of the National Association of Sentencing Commissions on August 3 – August 6; he felt the timing was especially advantageous.

5. Member Input and Adjournment

The Vice-Chair asked staff and members if they had additional items to discuss.

Interim Director Anne Wall pointed out a schedule of remaining 2014 meeting dates and locations. Ms. Wall suggested that the Commission return to its previous discussion about consecutive sentencing issues at the September meeting.

Judge Schellhas stated that the aggregated consecutive sentencing issue was very important because it had created a situation in which the supervised release portions of consecutive sentences were not being uniformly administered throughout the state. Judge Schellhas stated that Guidelines comment 2.F.02 gave clear instructions as to how to aggregate a consecutive sentence. Judge Schellhas forwarded a proposal to Commission staff that she would like discussed at one of the upcoming meetings.

Judge Lennon suggested that consecutive sentencing might be a good topic at the December's judge conference. Judge Lennon stated that she would contact the conference coordinator and Justice Dietzen indicated that he would talk to the Chief about this issue.

Commission Roy stated that, in light of the U.S. Sentencing Commission's vote to reduce drug trafficking sentences in April 2014, he asked MSGC staff to summarize the changes to the federal Guidelines for the Commission and asked whether staff had compared the federal changes to presumptive sentences in Minnesota to see if they are in-line with Minnesota.

Anne Wall indicated that staff had not made any comparisons between the federal Guidelines and Minnesota's since the modifications. Ms. Wall described the federal modifications based on information staff obtained from the United States Sentencing Commission; Version of Final Amendments (Effective November 1, 2014): Generally, drug trafficking offenses were categorized by drug amounts and the modifications lowered each category by two severity levels. A table describing the modifications in some detail was distributed to the Commission.

Commissioner Roy asked that staff compare Minnesota's presumptive sentences for drug offenses to the new federal Guidelines and asked to set it on a future agenda.

The Commission discussed the two open appointments on the Commission. There is a recommendation for the new public defender representative and the victim representative appointment is awaiting the Governor's approval.

Vice-Chair Dietzen thanked everyone for attending the meeting and asked for a motion to adjourn.

Motion to adjourn was made by Yamy Vang and seconded by Jason Anderson.

Motion carried.

The meeting adjourned at 2:32 p.m.