

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**July 27, 2017**

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on July 27, 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, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, Yamy Vang, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Jill Payne and Anne Wall.

Members of the public present included Kevin Featherly, Minnesota Lawyer; Ben Johnson, House Research; Lisa Netzer, Minn. Department of Corrections; and Robert Small, Executive Director of the Minn. County Attorneys Association.

**1. Call to Order**

Chair Dietzen called the meeting to order at 2:03 p.m.

**2. Approval of Agenda**

This was on the agenda as an action item.

**Motion** by Vice-Chair Schellhas and second by Ms. Vang 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 June 8, 2017.

**Motion carried** unanimously.

#### 4. Review of Public Hearing Record, Including Written Materials Submitted

Chair Dietzen called on Executive Director Reitz who detailed how the Commission complied with the public hearing requirements. Executive Director Reitz supplied the following information to the Commission:

On Monday, June 19, 2017, the notice of public hearing was published in the State Register and emailed to interested persons, and the contents of the proposed modifications were posted on the Commission's website the same day. The public hearing was held on July 20, 2017, in Room 1100; Minnesota Senate Building, 95 University Ave. W., St. Paul, MN 55155. No members of the public wished to testify before the Commission. After the public hearing, the record remained open for five calendar days to accept written comments; the Commission received no written comments during this period.

#### 5. Accept or Reject Proposed Modifications to the Sentencing Guidelines and Commentary

This was on the agenda as an action item.

Chair Dietzen called on Executive Director Reitz to summarize *Proposed Modifications to the Sentencing Guidelines and Commentary, Effective Date: August 1, 2017, Section A. New and Amended Crime Laws Affecting the Guidelines*. Chair Dietzen called for a motion.

**Motion** by Vice-Chair Schellhas and second by Judge Lennon to adopt the following proposal to modify Minnesota Sentencing Guidelines §§ 5.A and 5.B and Appendix 3; and to assign a severity level of 3 to Use of Automated Sales Suppression Devices, which is codified within the existing offense of Tax Evasion Laws, therefore making no modifications to §§ 5.A and 5.B as a consequence.

**Motion carried** unanimously.

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

\* \* \*

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

\* \* \*

Severity Level	Offense Title	Statute Number
3	Tax Evasion Laws	289A.63

\* \* \*

Severity Level	Offense Title	Statute Number
2	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	609.595, subd. 1 <del>(2)</del> , (3), & <del>(4)</del> , & (5)

\* \* \*

Severity Level	Offense Title	Statute Number
<u>2</u>	<u>Impersonating a Peace Officer</u>	<u>609.4751, subd. 3</u>

\* \* \*

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

\* \* \*

Statute Number	Offense Title	Severity Level
289A.63	Tax Evasion Laws	3

\* \* \*

Statute Number	Offense Title	Severity Level
<u>609.4751, subd. 3</u>	<u>Impersonating a Peace Officer</u>	<u>2</u>

\* \* \*

Statute Number	Offense Title	Severity Level
609.595 subd.1(1) & (2)	Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)	3
609.595 subd. 1(2)(3)(4), & (5)	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	2

\* \* \*

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

\* \* \*

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.4751, subd. 3	Impersonating a Peace Officer	2	24	CHS 6 (upper-range)

\* \* \*

Chair Dietzen called on Executive Director Reitz to summarize *Proposed Modifications to the Sentencing Guidelines and Commentary, Effective Date: August 1, 2017, Section B. Technical Amendments to Crime Laws Affecting the Guidelines*. Chair Dietzen called for a motion.

**Motion** by Judge Lennon and second by Ms. Middlebrook to adopt the following proposal to modify Minnesota Sentencing Guidelines §§ 5.A, 5.B, and 7, as a result of a technical amendments to the headnote and text of Minn. Stat. § 268.182, changing it from “APPLICANT’S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY” to “FRAUD; CRIMINAL PENALTY.”

Motion carried unanimously.

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

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
3	<u>False Representations Unemployment Benefit Fraud (Over \$5,000)</u>	268.182

\* \* \*

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
2	<u>False Representations Unemployment Benefit Fraud (\$5,000 or Less)</u>	268.182

\* \* \*

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

\* \* \*

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
268.182	<u>False Representations Unemployment Benefit Fraud (Over \$5,000)</u>	3
268.182	<u>False Representations Unemployment Benefit Fraud (\$5,000 or Less)</u>	2

\* \* \*

**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).

<b>Statute Number</b>	<b>Offense Title</b>
176.178	Workers Compensation Fraud
256.98	Wrongfully Obtaining Assistance
268.182	False Representations <u>Unemployment Benefit Fraud</u>

\* \* \*

Chair Dietzen called on Executive Director Reitz to summarize *Proposed Modifications to the Sentencing Guidelines and Commentary, Effective Date: August 1, 2017, Section C. Technical Corrections*. Chair Dietzen called for a motion.

**Motion** by Mr. Orput and second by Ms. Vang to adopt the following proposal to strike the reference to the obsolete cross-reference to Comment 2.C.10 in Comment 2.D.106; and to adopt the proposal to strike the word “annual” from the notation on the Guidelines cover page to clarify that the Guidelines are in effect until the next publication, which may or may not be annual.

A member asked a clarifying question of staff.

**Motion carried** unanimously.

## **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. \* \* \**

# Minnesota Sentencing Guidelines and Commentary

August 1  
2017

---

*These Sentencing Guidelines are effective August 1, ~~2016~~ 2017, 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.*

## **6. Criminal History Score – Decay Periods**

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

Chair Dietzen called on Senior Research Analysis Specialist Anne Wall began by providing a definition for “decay.” Ms. Wall reviewed the rationale for a decay policy; past and present decay policies in the Minnesota Guidelines; examples of how decay may differ depending on prison vs. probationary sentences; the “age” of prior felony offenses; estimated time until prior felony offenses reach decay; and decay policies from other states with sentencing guidelines. Decay policies from other states were summarized based on the Robina Institutes Criminal History Enhancements Sourcebook (Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell, Robina Institute of Criminal Law and Criminal Justice, *Criminal History Enhancements Sourcebook* (2015).

The Commission asked questions and discussed the issue.

Chair Dietzen said that the Commission will continue to discuss the item at its September and October meetings, and asked members to consider what other items related to criminal history it would like staff to explore.

## 7. Director's Report

Chair Dietzen called on Executive Director Reitz who reported on the following four items: a) The next meeting will be September 14, 2017 in room 1100 of the Senate Office Building; b) Commission members have been selected to attend the National Association of Sentencing Commission's conference in Santa Fe, New Mexico from August 27th through August 29th; c) Commission staff offices move to the Centennial Office Building as of tomorrow, and the new address is 658 Cedar Street, Suite G-58; Saint Paul, MN 55155; d) The Minnesota Supreme Court released a court decision yesterday holding that the amelioration doctrine requires the resentencing of a person whose conviction was not yet final on the effective date of section 18(b) of the Drug Sentencing Reform Act [\*State v. Kirby\*](#) (Minn. Aug. 26, 2017).

The Commission discussed the last item from the Executive Director's report at some length and staff asked the Commission for some guidance.

## 8. Public Input

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

## 9. Adjournment

Before adjournment, Chair Dietzen recognized Vice-Chair Schellhas who asked staff to research two criminal history questions and report back at the next meeting: 1) how often are offenders sentenced under Minn. Stat. § 609.1095 for certain dangerous and repeat felony offenders; and 2) identify other states with sentencing guidelines that assign greater weight to prior convictions with violence.

**Motion** by Judge Lennon and second by Ms. Vang to adjourn.

**Motion carried** unanimously.

The meeting was adjourned at 3:03 p.m.