

Approved Meeting Minutes

June 6, 2019

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on June 6, 2019, in Centennial Office Building, Lady Slipper Conference Room, 658 Cedar St., St. Paul, MN 55155.

Present were Commission Chair Kelly Lyn Mitchell, Vice-Chair Judge Heidi Schellhas, and Commission members Justice (Ret.) Christopher Dietzen, Valerie Estrada, Tonja Honsey, Cathryn Middlebrook, and Peter Orput. Also present were MSGC Executive Director Nate Reitz and MSGC staff members Nicole Jaspersen, Kathleen Madland, Jill Payne and Anne Wall.

Members of the public present included Ben Johnson, Minn. House of Representatives Research; Rachel Ganani, House DFL Caucus; Robert Haider, House DFL Research; Jake Grey, University of Minnesota, Robina Institute of Criminal Law and Criminal Justice; Robin Tu, University of Minnesota, Robina Institute of Criminal Law and Criminal Justice; Olivia Levinson, University of Minnesota, Robina Institute of Criminal Law and Criminal Justice; and Robert Small, Minn. County Attorneys Association.

1. Call to Order

Chair Mitchell 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 Justice Dietzen and second by Mr. Orput to approve the meeting agenda.

Motion carried.

3. Approval of Meeting Minutes

This was on the agenda as an action item.

Director Reitz noted that the year in the title should be corrected to “2019” rather than “2018.”

Motion by Vice-Chair Schellhas and second by Ms. Middlebrook to approve the meeting minutes from May 9, 2019, as corrected.

Motion carried.

4. Possible Modifications to the Sentencing Guidelines Relating to 2019 Session Laws

Chair Mitchell called on Executive Director Reitz to summarize the staff issue paper entitled, "Possible Modifications to the Sentencing Guidelines Relating to 2019 Regular and Special Session Laws." Director Reitz explained that several crimes were created or amended by the laws of the 2019 Regular Session and 1st Special Session, and are subject to the Commission's review.

A. New Crime Laws Affecting the Guidelines

This was on the agenda as an action item.

Director Reitz summarized the new felony offenses created by the 2019 Minnesota Session Laws, recommending that the Commission consider whether to assign severity-level rankings to the new offenses, whether they should be added to the list of offenses eligible for permissive consecutive sentences and the severe violent offense list, or whether other related Guidelines modifications should be made.

Director Reitz described the amended third- and fourth-degree criminal sexual conduct (CSC) offenses, whereby a licensed peace officer commits a crime by engaging in sexual penetration or sexual contact with someone who is physically or constructively restrained by the officer, or who does not reasonably feel free to leave the officer's presence. Consent is not a defense.

Director Reitz said that staff recommended the Commission rank the offenses with the existing third- and fourth-degree CSC offenses prohibiting sexual conduct by offenders in particular occupational relationships, and to include the new offenses on the permissive consecutive offense list. Staff did not recommend adding the offenses to the severe violent offense list.

Motion by Mr. Orput and second by Ms. Estrada to rank the offense of CSC 3rd Degree, Minn. Stat. § 609.344, subd. 1(p), at Severity Level C, and the offense CSC 4th Degree, Minn. Stat. § 609.345, subd. 1(p), at Severity Level (SL) D.

Motion carried

Motion by Mr. Orput and second by Justice Dietzen to make resulting modifications to Minn. Sentencing Guidelines §§ 4.B, 5.A and 5.B, as shown below, as well as the suggested style change to the Sex Offender Grid (Guidelines § 4.B), as shown below.

Note: *With respect to the Sex Offender Grid on the following page, the parenthetical description of SL F Possession of Child Pornography, which read "(Aggravated Violations)" at the time of this motion, has been changed to read "(Subseq./Pred. Off./Under 13)" to conform to subsequent Commission action (see p. 6). Also, the deletion of "subd." at SL D was implied but not explicit.*

Motion carried.


4.B. Sex Offender Grid


Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree-1(c)(d)(e)(f)(h) (e.g., contact, force, & injury) Prostitution; Sex Trafficking-3 1st Degree-1(a)</i>	B	90 <i>90</i> ³ -108	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree-1(c)(d)(g)(h)(i) (j)(k)(l)(m)(n)(o)(p) (e.g., penetration & force/occupation) Prostitution; Sex Trafficking-2nd Degree-1a</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
<i>CSC 2nd Degree-1(a)(b)(g) (e.g., contact & victim under 13) CSC 3rd Degree-1(a)(e)(f) or 1(b) with ref. to subd. 2(1) (e.g., penetration & child victim) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree-1(c)(d)(g)(h)(i) (j)(k)(l)(m)(n)(o)(p) (e.g., contact & force/occupation) Use Minors in Sexual Performance Dissemination of Child Pornography²</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree-1(a)(b)(e)(f) (e.g., contact & child victim) CSC 5th Degree Possession of Child Pornography (Subseq./Pred. Off./Under 13) (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree-1(b) with subd. 2(2) (i.e., penetration & child victim 24-48 mo. younger) Indecent Exposure Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Registration Of Failure to Register as a Predatory Offenders</i>	H	12 ¹ <i>12</i> ¹ -14	14 <i>12</i> ¹ -16	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

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Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)

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Severity Level	Offense Title	Statute Number
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C

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Statute Number	Offense Title	Severity Level
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree

* * *

Director Reitz next described changes to the maximum penalties applicable to Child Pornography and Use of Minors in Sexual Performance (Minn. Stat. §§ 617.246 & 617.247) when committed by repeat or predatory offenders, or when involving children under age thirteen. Under current law, the maximum imprisonment terms for Child Pornography possession and dissemination increase when committed by repeat or predatory offenders. The statutory change maintains (with some revisions) these two factors and adds a third: the involvement of a child under age thirteen. The statutory change also applies these three factors to increase the statutory maximum imprisonment term for Use of Minors in Sexual Performance. The maximum fines are adjusted as well. Finally, the law increases, from 10 years to 15 years, the conditional release term applicable to violators of these offenses who had previously been convicted of one of these offenses or of a CSC offense.

Director Reitz said that, pending completion of the Commission’s comprehensive review of the rankings of these offenses, staff recommended the Commission maintain existing rankings. Staff recommended treating the new and amended penalty-increasing factors (now including the involvement of a child under 13) the same as the existing penalty-increasing factors (i.e., when committed by repeat or predatory offenders); assigning Severity Level D to Use of Minors in Sexual Performance when the penalty-increasing factors are present (termed “Aggravated Violations” by staff); including the enhanced offense on the list of offenses eligible for permissive consecutive sentencing; making “Child Pornography” terminology consistent; and changing statutory references to conform to the new statutory structure.

Motion by Vice-Chair Schellhas and second by Mr. Orput to maintain existing rankings and to rank Use of Minors in Sexual Performance (Aggravated Violations) at Severity Level C.

Motion defeated with 3 votes in favor and 4 against.

Motion by Ms. Middlebrook and second by Ms. Estrada, pending completion of the Commission’s comprehensive review of the rankings of these offenses, to maintain existing rankings; to treat the new and amended aggravating factors the same as the

existing aggravating factors, for purposes of ranking Child Pornography offenses; and to rank Use of Minors in Sexual Performance (Aggravated Violations) at Severity Level D.

Motion carried with 4 votes in favor and 3 against.

Motion by Ms. Middlebrook and second by Ms. Estrada to change “aggravated violations” to “subsequent, by predatory offender, or child under 13” and to make resulting modifications to Minn. Sentencing Guidelines §§ 5.A and 5.B, as shown below.

Motion carried with 5 votes in favor and 2 against.

* * *

2.B.105. *If an offense has been repealed, but the elements of that offense have been incorporated into another felony statute, determine the appropriate severity level based on the severity level ranking for the current felony offense containing those similar elements. For example, in 2010, the Legislature recodified violations of domestic abuse no contact orders from Minn. Stat. § 518B.01, subd. 22(d) into Minn. Stat. § 629.75, subd. 2(d). This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table. For example, ~~possession of pornographic work involving minors~~ dissemination of child pornography under Minn. Stat. § 617.247, subd. 3(a), was unranked until August 1, 2006. It is currently ranked at Severity Level E, and receives a weight of ~~1½~~ 1½ points.*

* * *

[2.E.]3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(d).
- First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in ~~a~~ sexual performance. Minn. Stat. § 617.246, subd. 7.

- Possession of pornographic work involving minors. Child pornography. Minn. Stat. § 617.247, subd. 9.

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Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
D	Dissemination of Child Pornography (Subsequent, or by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</u>	617.246, subd. 2(b), 3(b), 4(b)

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Severity Level	Offense Title	Statute Number
E	Use Minors in Sexual Performance	617.246 subd. 2,3,4
	Dissemination of Child Pornography	617.247, subd. 3(a)
	<u>Use of Minors in Sexual Performance</u>	617.246, subd. 2(a), 3(a), 4(a)

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Severity Level	Offense Title	Statute Number
F	Possession of Child Pornography (Subsequent, or by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)

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Severity Level	Offense Title	Statute Number
G	Possession of Child Pornography	617.247, subd. 4(a)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
617.246 <u>subd. 2(a)</u> 3(a) 4(a)	Use of Minors in Sexual Performance Prohibited	E
<u>617.246 subd. 2(b)</u> 3(b) 4(b)	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>D</u>
617.247 subd. 3	Dissemination of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	D
617.247 subd. 3(a)	Dissemination of Pictorial Representation of Minors <u>Child Pornography</u>	E*
<u>617.247 subd. 3(b)</u>	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>D</u>
617.247 subd. 4	Possession of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	F
617.247 subd. 4(a)	Possession of Pictorial Representation of Minors <u>Child Pornography</u>	G
<u>617.247 subd. 4(b)</u>	<u>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>F</u>

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance Prohibited
617.246, subd. 3	Operation/Owner Use of Minors in Sexual Performance

Statute Number	Offense Title
617.246, subd. 4	Dissemination Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</u>
617.247, subd. 3(a)	Dissemination of Pictorial Representations of Minors <u>Child Pornography</u>
617.247, subd. 3(b)	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>
617.247, subd. 4(a)	Possession of Pictorial Representations of Minors <u>Child Pornography</u>
617.247, subd. 4(b)	<u>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>

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

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Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.776	Interference with Emergency Comm.	5	36 months	CHS 4
617.247, subd. 3(a)	Dissemination of Pictorial Representation of Minors <u>Child Pornography</u>	E	84 months	CHS 5

* * *

Director Reitz next described the newly created Surreptitious Observation Device offense under Minn. Stat. § 609.746, saying that the existing interference with privacy (surreptitious intrusion; observation device) is a gross misdemeanor. Under existing law (subd.1 (e)), a violation becomes a felony if committed against a minor victim, provided the offender knew or had reason to know the minor was present. A new felony is created under subdivision 1(f), with a maximum penalty of four years in prison. The new felony has common elements with the existing felony Surreptitious Observation Device (Minor Victim) offense—namely, that the victim must be under the age of 18, and the offender must know or have reason to know the

minor victim is present—but the new felony also requires that the offender must be more than 36 months older than the victim and be acting with sexual intent.

Director Reitz said that staff recommended the Commission assign a severity level to the new offense and consider other modifications to the Guidelines.

Motion by Vice-Chair Schellhas and second by Mr. Orput to assign the offense of Surreptitious Observation Device under Minn. Stat. § 609.746, subdivision 1(f), a Severity Level of G on the Sex Offender Grid; and to make resulting technical modifications to Minn. Sentencing Guidelines §§ 5.A, 5.B, 6, and Appendix 3, as shown below.

Motion carried with 4 votes in favor, 2 against, and 1 abstention.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
G	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>609.746, subd. 1(f)</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>G</u>

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>

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

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Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>G</u>	<u>48</u>	<u>CHS 5</u>

* * *

Director Reitz explained that Wage Theft was added to the theft crimes. The theft penalty statute is amended to include wage theft among those offenses which, if the value exceeds \$35,000, may be sentenced to a maximum penalty of 20 years in prison and a fine of \$100,000. Director Reitz said that staff recommended the Commission rank Wage Theft and add Wage Theft to the Theft Offense List (§ 7).

Motion by Vice-Chair Schellhas and second by Mr. Orput to rank Wage Theft (Over \$35,000) at Severity Level 6, Wage Theft (\$5,001–\$35,000) at Severity Level 3, and Wage Theft (\$5,000 or Less) at Severity Level 2; and to make resulting technical modifications to Minn. Sentencing Guidelines §§ 5.A, 5.B, and the theft offense list in § 7, as shown below.

Motion carried.

5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
6	Theft Over \$35,000	609.52, subd. 2(a)(3), (4), (15), & (16), & (19) with 609.52, subd. 3(1)
3	Theft Crimes – Over \$5,000	See section 7: Theft Offense List
2	Theft Crimes – \$5,000, or Less Theft Crimes – \$5,000 or Less	See section 7: Theft Offense List

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.52 subd. 2(a)(19) with subd. 3(1)</u>	<u>Wage Theft (Over \$35,000)</u>	<u>6</u>
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft (\$5,001-\$35,000)</u>	<u>3</u>
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft (\$5,000 or Less)</u>	<u>2</u>

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7. Theft Offense List

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Statute Number	Offense Title
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft</u>

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B. Amended Crime Laws Affecting the Guidelines

This was on the agenda as an information or possible action item. Staff recommended no action.

Chair Mitchell asked members if they wished to take action on any of the amended crime laws. There being no affirmative response, Chair Mitchell asked Director Reitz to move to item C.

C. Technical Amendments to Crime Laws Affecting the Guidelines

This was on the agenda as an action item.

Director Reitz explained that technical amendments were made to Minn. Stat. § 609.749 (Stalking), the term “stalking” or “stalks” is changed to “harass,” “harassment,” or “harasses.” The term “pattern of stalking conduct” is changed to “stalking.” Staff recommended making modifications due to this technical amendment.

Motion by Mr. Orput and second by Justice Dietzen to make conforming modifications to 2018 Minn. Sentencing Guidelines §§ 2.D.308, 5.A, 5.B, and 6; and to delete “or Subsequent” from references to 2nd Violations, as follows.

Motion carried.

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2.D.308. *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when sentencing an offender for a crime with an increased statutory maximum penalty under Minn. Stat. § 609.2233 (felony assault motivated by bias), or for a crime that was elevated to a felony offense because of bias motivation (e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault); 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(a)(1) (~~stalking harassment~~)). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.* * * *

5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
5	Stalking Harassment (3rd or Subsequent Violations)	609.749, subd. 4(b)
	Stalking (Pattern of Stalking Conduct)	609.749, subd. 5
4	Stalking Harassment (Aggravated Violations)	609.749, subd. 3(a),(b)
	Stalking Harassment (2nd or Subsequent Violation)	609.749, subd. 4(a)

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.749, subd. 3(a)(b)	Stalking Harassment (Aggravated Violations)	4
609.749, subd. 4(a)	Stalking Harassment (2nd or Subsequent Violation)	4

Statute Number	Offense Title	Severity Level
609.749, subd. 4(b)	Stalking Harassment (3rd or Subsequent Violations)	5
609.749, subd. 5	Stalking (Pattern of Conduct)	5

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6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
609.749, subd. 3	Stalking Harassment (Aggravated Violations)
609.749, subd. 4	Stalking Harassment (Subsequent Violations)
609.749, subd. 5	Stalking (Pattern of Conduct)

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D. Legislative Directives to the Commission

This was on the agenda as an information item.

Director Reitz explained how the 2019 Minnesota Session Laws, 1st Special Session, may be read as containing three directives to the Commission: (1) to appoint a representative to the Criminal Sexual Conduct Statutory Reform Working Group; (2) to appoint a representative to the Community Competency Restoration Task Force; and (3) to comprehensively review, and consider modifying, how the Guidelines address Child Pornography and Use of Minors in Sexual Performance.

5. Possible Technical Modifications to the 2019 Guidelines and Commentary

This was on the agenda as an action item.

A. Technical Errors in 2018 Guidelines and Commentary

Chair Mitchell called on Senior Research Analyst Specialist Jill Payne to present staff issue paper entitled, "Technical Modifications to the 2019 Guidelines and Commentary." Ms. Payne described six items in part A, "Technical Errors in 2018 Guidelines and Commentary" and two items in part B, "Technical Errors in 2019 Guidelines' Amendments."

Motion by Ms. Middlebrook and second by Ms. Honsey to amend apparent technical errors in the 2018 Guidelines and Commentary and proposed 2019 Guidelines amendments, as shown below.

The Commission discussed the motion.

Vice-Chair Schellhas made a friendly **amendment** to the motion, which was acceptable to the maker and second, to change “has” to “have” in § 2.B.3.e.

Motion carried, as amended.

Proposed modifications to 2018 Minn. Sentencing Guidelines and Commentary:

[2]B. Criminal History

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2.B.107. *In cases of multiple offenses occurring in a single course of conduct in which state law prohibits the offender from being sentenced on more than one offense, only the offense at the highest severity level should be considered. The phrase “before the current sentencing” means that in order for prior convictions to be used in computing the criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same court, sentencing must occur in the order in which the offenses occurred. The dates of the offenses must be determined according to the procedures in section ~~2A. 2~~.*

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[2]D. Departures from the Guidelines

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[3.a.](8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152-(2014).

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4.A. Sentencing Guidelines Grid

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CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	0	1	2	3	4	5	6 or more	
<i>Murder, 2nd Degree (Intentional murder; Drive-by Shootings)</i>	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree Murder, 2nd Degree (Unintentional murder) Murder, 3rd Degree (Depraved Mind)</i>	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Murder, 3rd Degree (Controlled Substances) Assault, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>

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5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
5	Financial Transaction Card Fraud (Over \$35,000)	609.821 subd. 3(a)(1)(i)

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Severity Level	Offense Title	Statute Number
UNRANKED	Unlawful Transfers or Sales of Recordings of Sounds; Sales	325E.201

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
325E.201	Unlawful Transfers or Sales of Recordings of Sounds; Sales	Unranked

* * *

Statute Number	Offense Title	Severity Level
609.52 subd. 2(a)(12)(13)	Theft of Services (Over \$5,000)	3
609.52 subd. 2(a)(13)	Theft of Services (\$5,000 or Less)	2

* * *

Statute Number	Offense Title	Severity Level
609.821 subd. 3(a)(1)(i)	Financial Transaction Card Fraud (Over \$35,000)	5

* * *

Proposed modifications to 2019 amendments to Minn. Sentencing Guidelines and Commentary:

* * *

[2]B. Criminal History

* * *

[2.e.](4) The court may not, however, waive assignment of a custody status point or half-point if either the current offense or a custody status offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. As used within this paragraph, "custody status offense" means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above.

- (i) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of 8, 9, 10, or 11 on the Standard Grid;
 - (ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166);
 - (iii) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of D8 or D9 on the Drug Offender Grid;
 - (iv) an offense listed in ~~Section~~ section 8, Severe Violent Offense List;
 - (v) Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b));
- or

(vi) an attempt or conspiracy to commit one of these offenses.

* * *

[3.]e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ten years ~~has~~ have elapsed between the date of the initial sentence following the prior conviction and the date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

* * *

[2]G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

14. Second or Subsequent Severe Violent Offense.

a. The following definitions apply to this section:

(1) A "severe violent offense" is an offense listed in ~~Section~~ section 8, Severe Violent Offense List. "Severe violent offense" includes attempt or conspiracy, and includes an equivalent felony from a jurisdiction other than Minnesota. A current offense is not a "severe violent offense" if section 2.E.4 (Mandatory Life Sentences) applies.

* * *

6. Clarification of Guidelines section 2.B.1.h (Prior Felony Resulting in Non-Felony Sentence)

This was on the agenda as a possible action item.

Chair Mitchell called on Director Reitz who presented a staff issue paper entitled, "Clarification of Guidelines § 2.B.1.h. (Prior Felony Resulting in Non-Felony Sentence)." Director Reitz discussed the ambiguity found in the first clause of § 2.B.1.h by the Minnesota Court of Appeals (*State v. Stewart*, 923 N.W.2d 668, 677–80 (Minn. Ct. App. 2019), *review denied* (Minn. Apr. 16, 2019)). Staff recommended deleting the clause, effective August 1, 2019.

Motion by Ms. Middlebrook and second by Mr. Orput to delete the first clause of Sentencing Guidelines § 2.B.1.h, as shown below.

Motion carried.

2. Determining Presumptive Sentences

* * *

B. Criminal History

* * *

1. Prior Felonies. * * *

- h. Non-Felony Sentence. ~~Except when a monetary threshold determines the offense classification of the prior offense (see section 2.B.7), w~~When a prior felony conviction resulted in a non-felony sentence (misdemeanor or gross misdemeanor), the conviction must be counted in the criminal history score as a misdemeanor or gross misdemeanor conviction as indicated in section 2.B.3.

* * *

7. Ranking Counterfeiting Currency

This was on the agenda as a possible action item.

Chair Mitchell called on Executive Director Reitz who presented a staff issue paper entitled, “Unranked Offense: Counterfeiting Currency under Minn. Stat. § 609.632.” At its March 14, 2019, meeting, the Commission reviewed and discussed Counterfeiting Currency to determine whether it was an appropriate offense to assign a severity level. The Commission asked staff for further analysis. Executive Director Reitz reviewed the background, policies, questions for the Commission, and possible reform options.

Motion by Ms. Middlebrook and second by Mr. Orput to rank offenses described in Minn. Stat. § 609.632, subd. 3 (“Counterfeiting of Currency; Uttering or Possessing”), with the penalty provisions of subdivision 4(b)(3) (\$5,000 or Less) at Severity Level 2; with the penalty provisions of subd. 4(b)(2) (\$5,001–\$35,000) at Severity Level 3; and with the penalty provisions of subd. 4(b)(1) (\$35,000 or More) at Severity Level 5.

Motion by Vice-Chair Schellhas and second by Justice Dietzen **to amend** the main motion to rank offenses with the penalty provisions of subdivision 4(b)(1) (\$35,000 or More)) at Severity Level 6 rather than Severity Level 5.

The maker and second of the main motion accepted the amendment as friendly, and the main motion was **amended** to rank offenses with the penalty provisions of subdivision 4(b)(1) (\$35,000 or More) at Severity Level 6.

Main motion, as amended, carried.

8. July 25 Meeting – Work Plan Ideas for Commission Members

Chair Mitchell asked the Commission to think about the future agenda ideas, identify issues or topics related to the Sentencing Guidelines, and to send those issues to Director Reitz by July 10, 2019.

9. Commission’s 2019 Meeting Calendar (Possibly Moving Nov. 14 Meeting to the Week of Nov. 4-8)

This was on the agenda as a possible action item.

Without objection, Chair Mitchell moved this item to the July 25, 2019, agenda.

10. Executive Director’s Report

This was on the agenda as an information item.

Director Reitz briefed the Commission on a Sentencing Guidelines delegation from Kosovo who wished to meet with members and staff of Minnesota’s Commission, and others.

Chair Mitchell asked Director Reitz if there were other pressing issues in his report. Director Reitz said the remainder of the report could be presented instead on July 25, 2019.

11. Public Input

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

12. Adjournment

The Chair adjourned the meeting at 3:32 p.m., without objection.