

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
April 27, 2016

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on April 27, 2016, in Room 225 of the Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul, MN 55155. Commission members present were Chair Justice Christopher Dietzen, Angela Champagne-From, Jeffrey Edblad, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Judge Heidi Schellhas, Yamy Vang, and Senior Judge Mark Wernick.

MSGC staff members present were Anne Wall and Jill Payne. Assistant Attorney General Jim Early was also present.

Members of the public present were Anita Alexander, ISAIAH; and Beth Kelly and Lisa Netzer, Minn. Department of Corrections.

1. Call to Order

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

2. Approval of Agenda

This was on the agenda as an action item.

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

Motion carried.

3. Approval of Meeting Minutes

This was on the agenda as an action item. The Commission discussed committing to a future practice of recording in the minutes the number of votes for or against contested motions. There were no objections.

Motion by Judge Lennon and second by Ms. Middlebrook to approve the meeting minutes from March 23, 2016.

Motion carried unanimously.

4. Vice-Chair Election

This was on the agenda as a possible action item.

Chair Dietzen stated that continuity was important for the Vice-Chair position and recognized Judge Schellhas's long service on the Commission. Chair Dietzen called for nominations.

Mr. Edblad **nominated** Judge Schellhas to serve as Vice-Chair, which was seconded by Ms. Vang.

Chair Dietzen called three times for any other nominations and, hearing none, closed nominations and called for the election of Judge Schellhas as Vice-Chair by acclamation.

Motion carried by unanimous consent.

5. Non-Legislative Modifications

This was on the agenda as a possible action item. Chair Dietzen asked staff to present the non-legislative modifications. Additionally, Chair Dietzen asked staff to ensure that there was a process in place to proofread the Guidelines and Commentary in its entirety to ensure oversights requiring modifications do not occur in the future.

A. Assigning a Second Custody Status Point

Senior Research Analysis Specialist Jill Payne explained that the word "and," which previously joined the two requirements for a second custody status point, appeared to have been inadvertently deleted during the 2012 Guidelines rewrite.

A discussion ensued.

Motion by Mr. Edblad and second by Vice-Chair Schellhas to modify Guidelines § 2.B.2.b, as shown below, to clarify that that both a current sex offense, as described in § 2.B.2.b(1), *and* a custody status for a prior sex offense, as described in § 2.B.2.b(2), are required for the assignment of two custody status points, with the clarification to take effect August 1, 2016.

Motion carried unanimously.

[Section 2.]B. Criminal History

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2. Custody Status at the Time of the Offense.

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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 (Minn. Stat. § 243.166); and

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

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B. Decimals in the Conspiracy/Attempted Murder, 1st Degree Grid

Ms. Payne explained that the Conspiracy/Attempted Murder Grid displays decimals in the lower range at Criminal History Scores 1, 3, and 5 which is inconsistent with the other grids and adds mathematical complexity for the sentencing judge.

A discussion ensued.

Motion by Vice-Chair Schellhas and second by Ms. Vang to modify the Grid in Guidelines § 2.G.11, as shown below, to display whole numbers in the lower ranges of the Grid at Criminal History Scores 1, 3, and 5, with the modification taking effect August 1, 2017.

Motion carried unanimously.

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

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11. Attempt or Conspiracy to Commit First-Degree Murder. When an offender is sentenced for attempt or conspiracy to commit murder in the first degree under Minn. Stat. § 609.185 or murder of an unborn child in the first degree under Minn. Stat. § 609.2661, the presumptive disposition is commitment. The presumptive durations are as follows:

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or More
<i>Conspiracy / Attempted Murder, 1st Degree</i>	180 <i>153-216</i>	190 <i>161.5</i> <u><i>162-228</i></u>	200 <i>170-240</i>	210 <i>178.5</i> <u><i>179-240</i></u> ¹	220 <i>187-240</i> ¹	230 <i>195.5</i> <u><i>196-240</i></u> ¹	240 <i>204-240</i> ¹

¹ 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.

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C. Clarify Non-Minnesota Offense Definitions

Ms. Payne explained that the definitions in § 2.B.5 for Non-Minnesota offenses are not clear following the 2012 Guidelines rewrite.

A discussion ensued.

Motion by Judge Wernick and second by Sgt. Ford to modify Guidelines § 2.B.5.b, as shown below, to clarify that the policy for classifying non-Minnesota prior offenses is, like the policy for classifying Minnesota prior offenses, based on offense definitions and sentencing polices in effect when the current Minnesota offense was committed, with the modification taking effect August 1, 2016.

Motion carried unanimously.

Section 2.B.5. Criminal History

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5. Convictions from Jurisdictions other than Minnesota.

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b. How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The section in which to count the non-Minnesota offense in criminal history depends on:

- whether the 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 current Minnesota offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

D. Other Technical Items

1. Ms. Payne explained that Guidelines § 8 lists all statutorily defined targeted misdemeanors, according to Minn. Stat. § 299C.10, subd. 1(e). Violation of a domestic abuse no contact order under [Minn. Stat. § 629.75](#) is listed out of numerical order.

Motion by Judge Lennon and second by Vice-Chair Schellhas to modify the list by putting violation of a domestic abuse no contact order under [Minn. Stat. § 629.75](#), in numerical order, as shown below, with the correction to take effect August 1, 2016.

Motion carried unanimously.

Section 8. Targeted Misdemeanor List

(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

Under Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Statute Number	Offense Title
169A.20	Driving While Impaired
518B.01; 629.75	Order for Protection Violation
609.224	Assault 5th Degree
609.2242	Domestic Assault
609.746	Interference with Privacy
609.748	Harassment or Restraining Order Violation
617.23	Indecent Exposure
<u>629.75</u>	<u>Domestic Abuse No Contact Order Violation</u>

- Ms. Payne explained that a violation of the corporate political contributions law under [Minn. Stat. § 211B.15](#) is a felony with a five-year statutory maximum. The offense is inadvertently omitted from Guidelines § 5. The law prohibits a corporate officer, manager, stockholder, member, agent, employee, attorney, or other representative from knowingly making a contribution to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

Motion by Vice-Chair Schellhas and second by Judge Wernick to designate a violation of the corporate political contributions law under [Minn. Stat. § 211B.15](#), as “unranked” in Guidelines § 5, as shown below, with the modification to take effect August 1, 2016.

Motion carried unanimously.

Section 5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
UNRANKED	Concealing Criminal Proceeds; Engaging in Business	609.496; 609.497
	<u>Corporate Political Contribution Violations</u>	<u>211B.15</u>
	Corrupting Legislator	609.425

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Section 5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

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Statute Number	Offense Title	Severity Level
211B.13	Bribery, Advancing Money, and Treating Prohibited	4
<u>211B.15</u>	<u>Corporate Political Contribution Violations</u>	<u>Unranked</u>
227.50	Issuing a Receipt for Goods One Does Not Have	Unranked

* * *

Chair Dietzen next addressed other non-legislative modifications that may be considered as part of the Commission's work plan and reminded members of the areas of interest that have been previously discussed including vertical grid axis (severity level) proportionality and examining criminal history scores. Chair Dietzen called for other ideas from members. A member suggested that the Commission look at how the

targeted misdemeanor policy disproportionately affects defendants of color. Another member wanted to ensure that the Commission looked at how predictive the criminal history score is on recidivism. Chair Dietzen indicated that the Commission would review its work plan at the June 8, 2016, meeting.

6. Legislative Update

This was on the agenda as a discussion item. Senior Research Analysis Specialist Anne Wall presented a staff summary of the drug sentencing reform act (Senate File 3481-A3). The Commission asked questions and discussed the bill.

Judge Lennon announced that she had been asked to record an eLearning video for judges about sentencing issues. She asked members and staff to forward any ideas to her on topics that should be covered.

7. Public Input

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

Adjournment

Motion to adjourn by Sgt. Ford and second by Vice-Chair Schellhas.

Motion carried unanimously.

The meeting was adjourned at 3:15 p.m.