

2023 Regular Session Laws

Other Laws of Interest to the Commission

June 5, 2023

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § 244.09, subd. 11, the Commission may make such modifications without advance submission to the Legislature. This paper reviews laws enacted in the 2023 Regular Session that are likely to be of interest to the Commission, but, in the opinion of staff, do not require Sentencing Guidelines Changes.

Laws Not Requiring Sentencing Guidelines Changes

The following are laws that either do not directly affect the Guidelines or do not require action. No Sentencing Guidelines changes are recommended.

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This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

1. Competency Attainment – Process Revised

Act: [2023 Minn. Laws ch. 14](#).

Description: The act makes various technical changes to the state’s competency restoration (now “attainment”) process.

Effective date: Originally enacted in 2022; effective July 1, 2023.

References: Minn. Stat. §§ [611.41-49](#); [611.51, 55-59](#); [Minn. Laws ch. 99, art. 3, § 1](#) (2022).

Long-Term Fiscal Impact: Not requested.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: Not applicable.

Staff Recommendations: No changes required or recommended.

2. Veterans Restorative Justice Act – Eligibility Process Clarified

Act: [2023 Minn. Laws ch. 19](#).

Description: The act reorganizes the Veterans Restorative Justice Act to clarify the process by which eligibility for deferred adjudication is established.

Effective date: Enacted in 2021; reorganized effective August 1, 2023.

References: Minn. Stat. §§ [609.1056](#); [Guidelines §§ 2.D.3.a\(9\) & 3.F](#).

Long-Term Fiscal Impact: Not requested.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: The act does not change the mitigated departure criteria found in Minn. Stat. § 609.1056, subd. 4, which is referenced in the Guidelines’ related mitigated-departure factor (2.D.3.a(9)): “In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4.” Guidelines § 3.F also addresses Military Veterans.

Staff Recommendations: No changes required or recommended.

3. Motor Vehicle Excise Tax – Offense Streamlined

Act: [2023 Minn. Laws ch. 25, § 163](#).

Description: Under Minn. Stat. § 297B.10(a) It is a felony to attempt to defeat or evade excise motor vehicle taxes in excess of \$300. The statute is amended by striking various specific ways the tax can be

evaded, “who prepares, completes, or submits a false or fraudulent motor vehicle purchaser’s certificate with intent to defeat or evade the tax imposed under this chapter or any purchaser who fails to complete or submit a motor vehicle purchaser’s certificate with intent to defeat or evade the tax,” leaving only the catchall language, “attempts to defeat or evade the tax.”

Being in the Revisor’s bill, this change was apparently intended to be a technical correction.

Effective date: August 1, 2023.

References: Minn. Stat. §§ [297B.10](#).

Long-Term Fiscal Impact: Not requested.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: Motor Vehicle Excise Tax under Minn. Stat. § 297B.10 is Unranked.

Staff Recommendations: No changes required or recommended.

4. Minnesota Sentencing Guidelines – Comprehensive Review Phase I Funded

Act: [2023 Minn. Laws ch. 52, art. 2, § 2\(d\)](#).

Description: The act appropriates to the Commission funding to begin a comprehensive review of the Sentencing Guidelines.

Effective date: July 1, 2023. Funds expire June 30, 2025.

References: [Minn. Stat. § 244.09, subd. 5](#).

Long-Term Fiscal Impact: The appropriation is \$243,000 in FY2024 and \$147,000 in FY2025. This is a onetime appropriation, although it is understood that only Phase I is funded.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: The Sentencing Guidelines were first promulgated in 1980 and have never been comprehensively reviewed.

Staff Recommendations: No changes required or recommended at this meeting, but this will surely command the Commission’s full attention in the near future.

5. Qualified Domestic Violence-Related Offenses – List Expanded

Act: [2023 Minn. Laws ch. 52, art. 4, § 2](#).

Description: The act added several crimes to the list of qualified domestic violence-related offenses (QDVRO) in Minn. Stat. § 609.02, subdivision 16. Prior convictions of offenses on the QDVRO list are used to enhance certain current assault, protective-order, and stalking offenses to a gross misdemeanor (second conviction or adjudication of delinquency within 10 years) or a felony (third or more conviction or adjudication of delinquency within 10 years). The offenses being added to the QDVRO list are Minn.

Statutes §§ 609.195, paragraph (a) (third-degree murder); 609.20, clauses (1), (2), and (5) (first-degree manslaughter); 609.205, clauses (1) and (5) (second-degree manslaughter); 609.25 (kidnapping); 609.255 (false imprisonment); and 609.582, subd. 1(c) (first-degree burglary with assault).

Effective date: August 1, 2023, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.02](#); [609.195](#); [609.20](#); [609.205](#); [609.25](#); [609.255](#); [609.285](#); [Guidelines §§ 2.B.3](#); [2.B.6.a](#) (2022).

Long-Term Fiscal Impact (H.F. 424-2UE): In its fiscal note, MSGC staff estimated the need for an additional five prison beds.

Demographic Impact (H.F. 424-2UE): Not applicable.

Sentencing Guidelines Considerations: The Guidelines allow non-traffic gross misdemeanors and targeted misdemeanors to be used for criminal history “units” on the sentencing worksheet. Generally, four units equal one criminal history point. There are exceptions in which felonies that are a felony “solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, the prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender’s criminal history score.” Guidelines § 2.B.6.a (2022)

Staff Recommendations: No changes required or recommended.

6. Felony Murder – New Requirements for Criminal Liability of Accomplices Added

Act: [2023 Minn. Laws ch. 52, art. 4, § 6](#).

Description: Liability for crimes of another under Minn. Stat. § 609.05 is amended by adding subdivision 2a, which adds requirements for criminal liability in cases of aiding and abetting first-degree murder under Minn. Stat. § 609.185(a)(3) (intentional murder while committing certain crimes) or second-degree murder under Minn. Stat. § 609.19, subd. 2(1) (felony murder). In the case of the first-degree crime, an accomplice is not liable unless the accomplice acted with intent to cause death. In the case of the second-degree crime, an accomplice is not liable unless the accomplice was a major participant in the underlying felony and acted with extreme indifference to human life.

Effective date: August 1, 2023, and applies to crimes committed on or after that date. Certain conditions must be met for retroactive application as well.

References: Minn. Stat. §§ [609.05](#); [609.185](#); [609.19](#) (2022).

Long-Term Fiscal Impact (HF1406-0): In its fiscal note, MSGC staff estimated an expected eventual total prison bed savings of 18 beds, resulting from shorter future sentences. In addition, an initial reduction of 17 beds—eventually declining to zero—will result from the retroactive application of the sentences for non-murder predicate offenses.

Demographic Impact ([Link to full DIS for HF1406-0](#)): It is estimated that the demographic characteristics of occupants of the prison beds reduced by this bill would be as follows –

- **Gender:** Male (78.3%); Female (21.7%).
- **Race & Ethnicity:** White (39.1%); Black (47.8%); American Indian (0%); Hispanic (13.0%); Asian (0%).
- **Judicial District:** First (17.4%); Second (21.7%); Third (0%); Fourth (47.8%); Fifth (0%); Sixth (4.3%); Seventh (4.3%); Eighth (0%); Ninth (0%); and Tenth (4.3%).

Sentencing Guidelines Considerations: First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. Second-degree murder under Minn. Stat. § 609.19, subd. 2(1) (felony murder) is ranked at SL 10. In terms of presumptive sentence, the Guidelines do not distinguish between the principal actor and an accomplice, although an accomplice’s “minor or passive role” or participation “under circumstances of coercion or duress” may serve as a basis for a mitigated departure under Guidelines section 2.D.3.a(2).

Staff Recommendations: No changes required or recommended.

7. Sentencing Guidelines Commission – Membership Amended

Act: [2023 Minn. Laws ch. 52, art. 6, §§ 1 & 2.](#)

Description: The act amends the Commission’s membership. The act divests the Chief Justice of her authority to appoint the court of appeals judge member and the district court judge member. The authority to appoint the former is assigned to Chief Judge of the Court of Appeals, and the authority to appoint the latter is assigned to the Judicial Council, upon recommendation of the Minnesota District Judges Association. With the addition of a new treatment or rehabilitative service provider member and a new academic member, total membership increases from eleven to thirteen. The act also requires one public member to have been discharged from a felony sentence, and permits the crime-victim public member to be a victim’s advocate instead. The act requires the governor elected in 2026 to stagger appointed members’ terms.

Effective date: Effective August 1, 2023.

References: Minn. Stat. §§ [244.09](#).

Long-Term Fiscal Impact: Not applicable.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: The existing Commission has 11 members. The membership is amended and expanded to 13 members.

Staff Recommendations: No changes required or recommended.

8. Prosecutors Permitted to Petition for Mitigated Resentencing

Act: [2023 Minn. Laws ch. 52, art. 6, §§ 3 & 10.](#)

Description: The act establishes a process for prosecutor-initiated sentence adjustment under newly enacted Minn. Stat. § 609.133, allowing the prosecutor responsible for the conviction to initiate a proceeding to reduce a sentence post-conviction. The Court must determine whether there are substantial and compelling reasons to adjust the sentence. If an adjustment is granted, the Court must state reasons for the adjustment in writing or on the record and complete and report basic demographic information to MSGC. The act requires MSGC to summarize and analyze sentence adjustments and report on case demographics in its annual Report to the Legislature.

Effective date: Effective August 1, 2023.

References: Minn. Stat. §§ [244.09](#); [609.115](#).

Long-Term Fiscal Impact (H.F. 226-0): In its fiscal note, MSGC indicated it would absorb the costs of receiving, summarizing, analyzing, and reporting geographical and demographic data on an estimated 10 cases annually.

Demographic Impact (H.F. 226-0): Not applicable.

Sentencing Guidelines Considerations: Under Minn. Stat. § 244.09, subd. 6, the Commission is a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on, among other things, state and local sentencing practices. This mandate appears similar to a mandate in subd. 14. Currently, under subd. 14, County Attorneys are required to submit to the Commission their data regarding felony cases in which defendants allegedly possessed or used a firearm and committed offenses listed in Minn. Stat. § 609.11, subdivision 9. The Commission is required to include in its annual report to the Legislature a summary and analysis of the reports received.

Staff Recommendations: No changes required or recommended.

9. Automatic Expungement Established

Act: [2023 Minn. Laws ch. 52, art. 7, § 12.](#)

Description: The act provides for automatic expungement of criminal and delinquency records upon dismissal, completion of Minn. Stat. § 152.18 requirements, or favorable resolution. The act also provides for conditional expungement of diversions, stays of adjudication, and, in the case of certain crimes, convictions—the condition being no new criminal convictions or charges within a one- to five-year waiting period after discharge.

Effective date: August 1, 2023.

References: Minn. Stat. § [609A.03, subd. 7a](#) (2022).

Long-Term Fiscal Impact (H.F. 615-1UE): Not applicable.

Demographic Impact (H.F. 615-1UE): Not applicable.

Sentencing Guidelines Considerations: Comment 2.B.03 recites Minn. Stat. § 609A.03, which provides that an expunged record may be used for sentencing purposes. The act does not alter the quoted statutory provision.

Staff Recommendations: No changes required or recommended.

10. Clemency Processes Amended

Act: [2023 Minn. Laws ch. 52, art. 8.](#)

Description: The act establishes a nine-member Clemency Review Commission to review applications and provide clemency recommendations to the Board of Pardons, which consists of the Governor, the Chief Justice, and the Attorney General. While current law requires the Board of Pardons to act unanimously, the act authorizes the Governor to grant clemency upon the concurrence of one other Board member.

Effective date: A transition period begins May 20, 2023, with the act taking full effect July 1, 2024.

References: Minn. Stat. § [638.02](#) (2022).

Long-Term Fiscal Impact (H.F. 615-1UE): Not applicable.

Demographic Impact (H.F. 615-1UE): Not applicable.

Sentencing Guidelines Considerations: When a pardon is granted, the conviction is set aside and the criminal record is purged. When a sentence is commuted, the act requires the sentencing court to amend the sentence to reflect the specific relief granted.

Staff Recommendations: No changes required or recommended.

11. Fentanyl Quantity Thresholds Reduced

Act: [2023 Minn. Laws ch. 52, art. 15, §§ 7–12.](#)

Description: The act defines “fentanyl” to include carfentanil, etc.; and creates new fentanyl thresholds for controlled substance crimes under Minn. Stat. §§ 152.021 to 152.023, and 152.025, similar to those that now exist for heroin. A new “dosage unit” threshold is applied to fentanyl and, in several instances, to heroin also. The new thresholds are:

- First-Degree Sale – 10 g or more (new for fentanyl); 40 dosage units or more (new for heroin and fentanyl).
- First-Degree Possession – 25 g or more (new for fentanyl); 100 dosage units or more (new for heroin and fentanyl).
- Second-Degree Sale – 3 g or more (new for fentanyl); 12 dosage units or more (new for heroin and fentanyl).
- Second-Degree Possession – 6 g or more (new for fentanyl); 50 dosage units or more (new for heroin and fentanyl).

- Third-Degree Possession – 55 g or more, or 25 dosage units or more (new for fentanyl; no change to heroin).

Effective date: August 1, 2023, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [152.01](#); [152.022](#); [152.023](#); [152.025](#) (2022).

Long-Term Fiscal Impact (H.F. 615-1UE): MSGC staff estimated the need for an additional 10 prison beds.

Demographic Impact (H.F. 615-1UE): It is estimated that the demographic characteristics of occupants of the prison beds would be as follows –

- Gender: Male (98.5%); Female (1.5%).
- Race & Ethnicity: White (37.3%); Black (40.3%); American Indian (17.9%); Hispanic (3.0%); Asian (1.5%).
- Judicial District: First (4.5%); Second (7.5%); Third (6.0%); Fourth (31.3%); Fifth (1.5%); Sixth (11.9%); Seventh (11.9%); Eighth (4.5%); Ninth (10.4%); and Tenth (10.4%).

Sentencing Guidelines Considerations: Controlled substance sale and possession offenses are ranked on the Drug Offender Grid from SL D9 (most severe) to SL D1 (least severe) generally based on the type of controlled substances and the amount.

Staff Recommendations: No changes required or recommended.

12. Possession of Residual Drugs in Paraphernalia Decriminalized

Act: [2023 Minn. Laws ch. 52, art. 15, §§ 13-15](#)

Description: The act excludes possession of a residual drug amount contained in drug paraphernalia from fifth-degree controlled substance crime. Drug paraphernalia possession, which was a petty misdemeanor, is legalized; it remains subject to local prohibition. Minn. Stat. § 152.092 (Possession of Drug Paraphernalia Prohibited) is repealed.

Effective date: Effective August 1, 2023.

References: Minn. Stat. §§ [152.025](#); [152.092](#); [152.093](#).

Long-Term Fiscal Impact: Not requested.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: Under current law, a defendant in possession of a residual amount of a Schedule I–IV controlled substance, other than marijuana, could be convicted and sentenced for controlled substance crime in the fifth degree. For first-time offenders, such a crime would likely be a gross misdemeanor; otherwise, the crime would be a felony. Even after the bill’s enactment, such convictions will continue to contribute to the criminal history score.

Staff Recommendations: No changes required or recommended.

13. Damages; Illegal Molestation of Human Remains, Burials, Cemeteries – Crime Expanded

Act: [2023 Minn. Laws ch. 62, art. 2, § 108](#)

Description: Minn. Stat. § 307.08 now makes it a felony to destroy, mutilate, or injure human burials or burial grounds, to disturb such grounds, or to remove human remains. While current law requires the act to have been done “intentionally, willfully, and knowingly,” the act changes “and” to “or,” requiring only that the act be done “intentionally, willfully, or knowingly.” The protected objects are expanded to include “or associated grave goods.” The gross misdemeanor is expanded as well, and a misdemeanor is added.

Effective date: August 1, 2021.

References: Minn. Stat. §§ [307.08](#).

Long-Term Fiscal Impact: Not requested.

Demographic Impact: Not applicable.

Sentencing Guidelines Considerations: The felony under Minn. Stat. § 307.08—Damages; Illegal Molestation of Human Remains; Burials; Cemeteries—is ranked at SL 3.

Staff Recommendations: No changes required or recommended.