1. **Call to Order.**

The meeting was called to order at 2:01 p.m.

2. **Approval of Meeting Minutes from May 16, 2013.**

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

   **Motion carried.**

3. **New and Amended Crimes Enacted by the 2012 Legislature.**

   The Commission considered new and amended crimes enacted by the 2013 Legislature and proposed applicable Severity Levels and modifications to offenses eligible for permissive consecutive sentencing.

   **A. Amended Offenses.**

   The Commission reviewed one amended offense: aggregation of financial exploitation of vulnerable adults.

   **Aggregation of Financial Exploitation of Vulnerable Adults** under Minn. Stat. 609.2335 was amended to include subdivision 4 which allows for aggregating the value of the money or property or services received by the defendant within a six-month period. The defendant is then charged according to the criminal penalties in subdivision 3. The Commission ranks financial exploitation of a vulnerable adult over $1,000 at Severity Level 4; over $5,000 at Severity Level 5; and over $35,000 at Severity Level 7. The Commission recognized that because the current rankings are based on dollar amount, this new aggregation provision may result in an increase in the number of people who are charged with felony-level offenses as well as an
increase in the number of felony offenses sentenced at higher severity levels. After considering the amendment and current Severity Level rankings, a motion was made.

**Motion** to maintain the current Severity Level rankings was made by Judge Heidi Schellhas and seconded by Connie Larson.

The Commission asked if there were special considerations made in the Guidelines for offenses in which aggregation was allowed in statute. Staff indicated that there was not.

**Motion carried.**

**B. New Offenses.**

The Commission considered new offenses that were enacted into law by the 2013 Legislature. Staff explained that one of the responsibilities of the Commission was to assign Severity Level rankings to new crimes and to consider whether the new crimes should be added to the list of offenses eligible for permissive consecutive sentences in Minn. Sentencing Guidelines § 6. Staff said that the Commission may base its decisions, in part, on the level of harm caused by the offense and the culpability of the offender; statutory maximums were also something to consider as well as Severity Level rankings for similar offenses. The Commission then discussed the following offenses:

1. **Emergency Telephone Calls and Communications** under Minn. Stat. § 609.78, was amended by adding new offenses to the law.
   a. It is a felony under subdivision 2b(1), if a person commits a third or subsequent violation of the misdemeanor offense of making or initiating an emergency call, knowing that no emergency exists, and with the intent to disrupt, interfere with, or reduce the provision of emergency services or the emergency call center’s resources, remaining silent, or making abusive or harassing statements to the call recipient.
   
   b. It is a felony under subdivision 2b(2), if a person intentionally uses multiple communication devices or electronic means to block, interfere with, overload, or otherwise prevent the emergency call center’s system from functioning properly, and these actions make the system unavailable to someone needing emergency assistance.
c. It is a felony under subdivision 2a, if a person places an emergency call and reports a fictitious emergency with the intent of prompting an emergency response, and the call triggers an emergency response and, as a result of the response, someone suffers great bodily harm or death.

For the Commission’s consideration, staff presented Severity Level rankings, statutory maximums, and definitions for exiting offenses. The Commission then assigned the following Severity Level rankings and modifications to the permissive consecutive sentencing list in § 6.

- When ranking the offense under subdivision 2b(1), the Commission considered that misdemeanor-level assault offenses and violation of restraining order are elevated to felony-level for third and subsequent offenses. Those felonies have five-year statutory maximums and are ranked at Severity Level 4.

  **Motion** to rank the offense at Severity Level 4 by John Stuart and seconded by Judge Heidi Schellhas.

  **Motion carried.**

  **Motion** to not add the offense to the permissive consecutive sentencing list in § 6, by John Stuart and seconded by Connie Larson.

  The Commission asked staff if there were any examples of offenses for which this offense would run permissively consecutive. The staff was not able to think of a situation.

  **Motion carried.**

- When ranking the offense under subdivision 2b(2), the Commission considered interference with emergency communications under Minn. Stat. § 609.776. The existing felony offense has a 3-year statutory maximum. It is ranked at Severity Level 5.

  **Motion** to rank the offense at Severity Level 5 by Commissioner Roy and seconded by John Stuart.

  **Motion carried.**
Motion to not add the offense to the permissive consecutive sentencing list in § 6, by Jason Anderson and seconded by Connie Larson.

Some Commission members had concerns about not making this offense eligible for permissive consecutive sentencing because it involved jamming a 911-communications system. The thought being that the crime might be committed in order to commit another crime, such as a person crime, and evade detection.

Motion failed.

Motion to add the offense to the permissive consecutive sentencing list in § 6, by Justice Christopher Dietzen and seconded by Sgt. Paul Ford.

Motion carried.

- When ranking the felony under subdivision 2a, the Commission considered second-degree manslaughter under Minn. Stat. § 609.205 (1). The offense has a 10-year statutory maximum and is ranked at Severity Level 8. Second-degree manslaughter under this clause involves “culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another;…”

Motion to rank the offense at Severity Level 8 by Commissioner Roy and seconded by Yamy Vang.

Some Commission members argued that the proposed severity level was too high given that there was no intent to cause the type of injury that might occur during an accident when responding to the call. Other members argued that the offender’s specific intent did not matter and that accidents following high-speed emergency responses often result in very serious injuries. The Commission also discussed possibly bifurcating the severity levels: Severity Level 8 for death and a lower severity level when the result is great bodily harm.

Motion carried: 5 in favor; 4 opposed.

Motion to add the offense to the permissive consecutive sentencing list in § 6, by Justice Christopher Dietzen and seconded by Judge Heidi Schellhas.
Motion carried.

2. **Wildfire Arson** under Minn. Stat. § 609.5641, was amended by adding new offenses to the law. The existing law of wildfire arson defined as intentionally setting a fire to burn out of control on land of another containing timber, underbrush, grass, or other vegetative combustible material was amended by adding new offenses for which the statutory maximums were based on the number of buildings, acres, or size of crop loss that are damaged or threatened with damage. The penalty for the existing felony was moved from subdivision 1 to subdivision 1a(a).

   a. Under subdivision 1a(b), the statutory maximum is ten years when the fire damages or threatened to damage in excess of five dwellings, burns 500 or more acres or damages crops in excess of $100,000.

   b. Under subdivision 1a(c), the statutory maximum is 20 years when the fire damages or threatened to damage in excess of 100 dwellings, burns 1,500 or more acres or damages crops in excess of $250,000.

   c. Additionally, subdivision 1a(d) was added for intentionally setting a fire where the fire causes another person to suffer demonstrable bodily harm. The statutory maximum is ten years.

For the Commission’s consideration, staff presented Severity Level rankings, statutory maximums, and definitions for exiting offenses. The Commission then assigned the following Severity Level rankings and modifications to the permissive consecutive sentencing list in § 6.

- When ranking the existing offense that was recodified from subd. 1 to subd. 1a(a), the Commission considered that the current definition of the offense and the statutory maximum were not changed.

  Motion to maintain the current Severity Level 2 ranking made by Justice Christopher Dietzen and seconded by Sgt. Paul Ford.

  **Motion carried.**

  Motion to not add the offense to the permissive consecutive sentencing list in § 6, by Jason Anderson and seconded by Justice Christopher Dietzen.
Motion carried.

- When ranking the offense under subdivision 2a(b) where the fire damages or threatened to damage in excess of five dwellings, burns 500 or more acres or damages crops in excess of $100,000, the Commission considered second-degree arson which is defined under Minn. Stat. § 609.562 as “intentionally destroying or damaging any building not covered by first-degree arson.” The statutory maximum is 10 years. The Commission ranks second-degree arson at Severity Level 5. It is not on the list of offenses eligible for permissive consecutive sentencing.

The Commission reviewed the definition for first-degree arson under Minn. Stat. § 609.561: “whoever unlawfully by means of fire or explosives, intentionally destroys or damages any building that is used as a dwelling at the time the act is committed, whether the inhabitant is present therein at the time of the act or not, or any building appurtenant to or connected with a dwelling whether the property of the actor or of another, commits arson in the first degree and may be sentenced to imprisonment for not more than 20 years or to a fine of not more than $20,000, or both.”

Members discussed the differences between fires that threaten to burn dwellings versus actually burning a dwelling (as is the case in arson). One member argued for ranking the offense at Severity Level 2, alongside felony criminal damage to property over $500.

Motion to rank the offense at Severity Level 8 by Judge Heidi Schellhas and seconded by Justice Christopher Dietzen.

Judge Heidi Schellhas argued that the offense has the potential to be very dangerous.

Another member agreed that the offense should be ranked higher than Severity Level 5 because the offense is very serious, especially to agriculture communities, but questioned the proportionality when ranking the next most serious offense in which fire damages or threatened to damage in excess of 100 dwellings, burns 1,500 or more acres or damages crops in excess of $250,000.

Amended Motion to rank the offense at Severity Level 7 by Judge Heidi Schellhas and seconded by Connie Larson.
One member directed the others to subd. 1(e), where it reads: “[F]or purposes of this section, a building or dwelling is threatened when there is a probability of damage to the building or dwelling requiring evacuation for safety of life.” The member indicated that, while the offense is bad, it is disproportionate to rank it higher than second-degree arson when wildfire arson has a “probability” of damage and arson has actual damage.

Another member stated that even if the harm is merely the threat of harm rather than actual damage, the offense is serious and significant because of potential community relocation efforts and possible need for EMT services.

**Motion carried: 7 in favor; 2 opposed.**

**Motion** to add the offense to the permissive consecutive sentencing list in § 6, by Justice Christopher Dietzen and seconded by Judge Heidi Schellhas.

**Motion carried.**

- The Commission discussed ranking subdivision 1a(c), in which the fire damages or threatened to damage in excess of 100 dwellings, burns 1,500 or more acres or damages crops in excess of $250,000. Staff compared the offense to first-degree arson which has a 20-year statutory maximum and is on the list of offenses eligible for permissive consecutive sentencing.

  **Motion** to rank the offense at Severity Level 8 by Connie Larson and seconded by Sgt. Paul Ford.

  **Motion carried.**

  **Motion** to add the offense to the permissive consecutive sentencing list in § 6, by Judge Heidi Schellhas and seconded by Jason Anderson.

  **Motion carried.**

- The Commission considered subdivision 1a(d), in which intentionally setting a fire causes another person to suffer demonstrable bodily harm. The statutory maximum is ten years. Staff directed the Commission to other felony offenses in which “demonstrable bodily harm” is a factor: 1) fourth-degree assault against peace officers, firefighters, etc. performing official duties (ranked at Severity Level 1; two-year statutory maximum); and 2)
unreasonable restraint of children (ranked at Severity Level 3; two-year statutory maximum).

**Motion** to rank the offense at Severity Level 3 by John Stuart.

**Motion failed due to lack of a second.**

**Motion** to rank the offense at Severity Level 5 by Judge Heidi Schellhas and seconded by Jason Anderson.

**Motion carried: 8 in favor; 1 opposed.**

**Motion** to add the offense to the permissive consecutive sentencing list in § 6, by Justice Christopher Dietzen and seconded by Yamy Vang.

**Motion carried.**

C. Gross Misdemeanors/Targeted Misdemeanors.

The Commission reviewed three new gross misdemeanors enacted during the 2013 Legislative Session: Gross Misdemeanor Emergency Telephone Calls and Communications (Minn. Stat. § 609.78); Gross Misdemeanor Assault in the Fourth Degree against a Transit Operator (Minn. Stat. § 609.2231); and Gross Misdemeanor Violation by Body Art Technician. Staff noted that there were no new targeted misdemeanors enacted in 2013. Staff directed the Commission to a hand-out describing amendments made to domestic abuse-related offenses in Minn. Session Laws, Chapter 47. Staff explained that no action was required on the amendments made to gross misdemeanors and targeted misdemeanors. The amendments were brought before the Commission for informational purposes only because Minn. Sentencing Guidelines § 2.B.3 provides that prior non-traffic gross misdemeanors and misdemeanors on the targeted misdemeanor list defined in Minn. Stat. § 299C.10, subd. 1(e) count towards an offender’s criminal history score.

D. Other Legislative Action – Presumptive Executed Sentences for Repeat Sex Offenders.

The Commission reviewed amendments made Minn. Stat. § 609.3455. The statute was amended to provide for presumptive executed prison sentences of at least 36 months for offenders sentenced for first- through fourth-degree criminal sexual conduct offenses under Minn. Stat. §§ 609.342 to 345, and criminal sexual predatory conduct under Minn. Stat. § 609.3453, if the offender has a previous sex offense.
conviction. The court may stay execution of the presumptive sentence if it finds that
the offender is accepted by and can respond to a long-term inpatient treatment
program for sex offenders.

Staff recommended adding language to Minn. Sentencing Guidelines § 2.C.3.a, to
address presumptive executed prison sentences of at least 36 months for repeat sex
offenders.

**Motion** to amend the Minn. Sentencing Guidelines § 2.C.3.a, as shown below,
made by Commissioner Tom Roy and seconded by Judge Heidi Schellhas.

**Motion carried.**

**Proposed Modification:**

3. **Finding the Presumptive Sentence for Certain Offenses.**
   a. **Sex Offenses.** Under Minn. Stat. § 609.3455, certain sex offenders are
      subject to mandatory life sentences and certain repeat sex offenders are
      subject to presumptive executed prison sentences of at least 36 months.
      
      (1) **Mandatory Life Sentence.** The Sentencing Guidelines presumptive
      sentence does not apply to offenders subject to mandatory life without
      the possibility of release under subdivision 2 of that statute. For
      offenders subject to life with the possibility of release under
      subdivisions 3 and 4 of that statute, the court must specify a minimum
      term of imprisonment, based on the Sentencing Guidelines
      presumptive sentence as determined in section 2.C, or any applicable
      mandatory minimum sentence not contained in Minn. Stat. §
      609.3455, that must be served before the offender may be considered
      for release.

      (2) **Presumptive Executed Prison Sentences of at least 36 Months.** Except
      when a life sentence applies, if the current conviction offense is
      criminal sexual conduct in the first, second, third, or fourth degree
      (Minn. Stat. §§ 609.342 to 345) or criminal sexual predatory conduct
      (609.3453) within 15 years of a previous sex offense conviction, under
      Minn. Stat. § 609.3455, subd. 10, the presumptive disposition is
      commitment. The presumptive duration is at least 36 months, or the
      fixed duration indicated in the appropriate cell on the Grid, whichever
      is longer.

   E. **Technical Modifications.**
Staff explained that the statute for Overworking or Mistreating Animals was amended by the 2010 Legislature. A new gross misdemeanor for harming a service animal that renders the service animal unable to perform its duties was inserted as paragraph (e); the felony offenses that followed the gross misdemeanor were then renumbered. Staff recommended correcting Minn. Sentencing Guidelines §5.

**Motion** to correct the Minn. Sentencing Guidelines § 5, as shown below, made by Jason Anderson and seconded by Sgt. Paul Ford.

**Motion carried.**

**Proposed Modification:**

**5.A. OFFENSE SEVERITY REFERENCE TABLE**

* * *

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<thead>
<tr>
<th>Severity Level</th>
<th>Offense Title</th>
<th>Statute Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNRANKED</td>
<td>Service Animal Providing Service</td>
<td>343.21, subd. 9(e)(g) (f)(h)</td>
</tr>
<tr>
<td>UNRANKED</td>
<td>Torture or Cruelty to Pet or Companion Animal</td>
<td>343.21, subd. 9(c)(d)(f)(h) (g)(i)</td>
</tr>
</tbody>
</table>

* * *

**5.B. SEVERITY LEVEL BY STATUTORY CITATION**

* * *

<table>
<thead>
<tr>
<th>Statute Number</th>
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</tr>
</tbody>
</table>

* * *
4. **Consecutive Sentencing Involving Attempt or Conspiracy.**

Executive Director Kelly Mitchell explained Commission staff has received questions about finding the presumptive duration for consecutive sentences when the second offense is an attempt or conspiracy offense. Ms. Mitchell explained that the rule for finding the presumptive duration is to first locate the duration at a Criminal History Score of 0 or 1 (as appropriate), and then to cut that duration in half. This guidance is derived from reading Minn. Sentencing Guidelines §§ 2.F and 2.G together.

Ms. Mitchell asked the Commission if the comments to § 2.F should be amended to clarify that if the court sentences an attempted offense consecutively, the presumptive duration is one-half of the duration found in the appropriate cell on the applicable Grid at a Criminal History Score of 1 for presumptive consecutive sentences and at a Criminal History Score of 0 for permissive consecutive sentences?

**Motion** to add commentary to Minn. Sentencing Guidelines § 2.F, as shown below, made by John Stuart and seconded by Judge Heidi Schellhas.

**Motion carried.**

**Proposed Modifications:**

* * * *

**2.F.104.** If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half – making the presumptive duration 29 months.

* * * *

* * * *

**2F.203.** If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced permissive consecutive to
another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months.

* * * *

5. Other Business.

The 2013 National Association of Sentencing Commissions conference will be held August 4-6, 2013, in Minneapolis at the University of Minnesota Law School. Executive Director Kelly Mitchell explained that because Minnesota is the host state, registration fees are waived for Commission members. Ms. Mitchell encouraged all members to attend.

6. Public Input.

There was no input from the public. Chair Jeffrey Edblad noted for the record that there were no members of the public in attendance at any time during the meeting.

7. Adjournment

Motion to adjourn by Justice Christopher Dietzen and seconded by Yamy Vang.

Motion carried.

Chair Edblad adjourned the meeting at 3:43 p.m.