

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**May 21, 2015**

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on May 21, 2015 in Room G-31, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155. Commission members present were Chair Jeffrey Edblad, Vice-Chair Justice Christopher Dietzen, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Commissioner of Corrections Tom Roy, Judge Heidi Schellhas, and Yamy Vang. MSGC staff members present were Executive Director Nate Reitz, and staff members Mike Jones, Kathleen Madland, Linda McBrayer, Anne Wall, and Jill Payne. Assistant Attorney General Jim Early was present.

Members of the public present were Commissioner of Human Rights Kevin Lindsey; Scott Beutel, Legislative & Public Affairs Liaison, Department of Human Rights; and Bill Lemons, Minnesota County Attorneys Association.

**1. Call to Order**

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

**2. Approval of Agenda**

This was on the agenda as an action item.

**Motion** made by Sgt. Ford and seconded by Justice Dietzen to take agenda items out of order to accommodate members of the public in attendance.

**Motion carried.**

**3. Approval of Meeting Minutes**

This was on the agenda as an action item.

**Motion** made by Judge Lennon and seconded by Ms. Vang to approve the meeting minutes from April 16, 2015.

**Motion carried.**

**4. Commemoration of the 35<sup>th</sup> Anniversary of the Minnesota Sentencing Guidelines**

The Chair stated that 35 years ago, on May 1, 1980, Minnesota became the first state in the nation to implement sentencing guidelines and asked Commission members, staff,

and members of the public present to join him in celebrating the Minnesota Sentencing Guidelines' 35th birthday.

## **5. New-Member Welcome and Introductions (if applicable)**

The Chair indicated that there were no new members to recognize.

## **6. Recognition of Outgoing Member(s)**

The Chair indicated that there were no outgoing members present to recognize.

## **7. Guidelines Modifications Relating to Crimes Created or Amended by the Legislature**

This was on the agenda as an action item. The Chair called on the Executive Director Reitz who led the Commission through three documents in the meeting materials related to modifications to the Sentencing Guidelines.

### **A. Modifications to the Sentencing Guidelines – 2015 Legislative Bills Passed into Law; Creating or Amending Crime Laws**

2015 Minn. Laws ch. 23, § 1, expanded fourth-degree assault protections to employees supervising and working directly with mentally-ill and dangerous patients by amending Minn. Stat. § 609.2231, subd. 3a.

It was explained that the Commission must decide if the amended offense must be re-ranked, if there should be any amendments to the permissive consecutive offense list, or other amendments to the Guidelines based on the amendments to the law.

Staff recommended, first, that the Severity Level 1 ranking in section 5 be maintained because the statutory maximum remained two years. Second, staff recommend that assault in the fourth degree remain on the list of offenses in section 6 which are eligible for permissive consecutive sentences. Third, staff recommended that the fourth-degree assault offense titles, as listed in Section 5.B., be updated to reflect statutory changes to fourth-degree assault enacted since 2004, by deleting "Bodily Harm" from the fourth-degree assault offense titles, and by adding ", Prosecutor, Judge, Probation Officer" in the offense title for Minn. Stat. § 609.2231, subd. 3. Fourth, staff recommended that Appendix 1 be updated to reflect the MSOP-related mandatory minimum, as well as to clarify the general rule regarding executed consecutive sentencing for assaults committed by prison inmates, by revising the footnote in Section 5.B. pertaining to fourth-degree assault to read, "\* See section 2.C and Appendix 1 to determine the presumptive disposition for a ~~felony~~ assault

committed by ~~an~~ State prison inmate serving an executed term of imprisonment or for assault on secure treatment facility personnel by persons committed to the Minnesota Sex Offender Program.”; and by revising the Appendix 1 entry for Minn. Stat. § 609.221-609.2231 as follows: revising the Statute to “609.221, 609.222, 609.223, 609.2231 or 609.224”; revising the Offense to “Assault 1st through 5th Degree”; revising the Prerequisite or Conditions to ‘Committed by State prison inmate while confined (609.2232) Must commit during “Term of Imprisonment” portion of executed sentence’; and revising the Minimum Duration to “Grid Time, Consecutive”.

**Motion** to adopt the staff recommendations made by Commissioner Roy and seconded by Justice Dietzen.

**Motion carried.**

Two other bills which affect crimes were passed into law by the 2015 Legislature. Although these laws were amended, the crimes themselves were not amended. It was explained that staff brought the changes forward for the Commission’s information, but no action was required. The laws were: 1) 2015 Minn. Laws ch. 21, art 1, §§ 37, 66, 98-100, which amended murder in the first degree under Minn. Stat. § 609.185; and 2) 2015 Minn. Laws ch. 4, § 1, which amended reporting of maltreatment of minors under Minn. Stat. § 626.556.

B. Modifications to the Sentencing Guidelines – 2015 Legislative Bills Presented to the Governor; Creating or Amending Crime Laws

It was explained that the following were Legislative crime bills presented to the Governor but not yet signed into law. The bills must be reviewed and considered by the Commission for possible modifications to the Sentencing Guidelines provided the bills become laws. The following actions of the Commission were conditional on the Governor’s signature of the bills, as presented.

1. Engaging in, Hiring, or Agreeing to Hire Minor to Engage in Prostitution (2015 Minn. Laws ch. 65, art. 6, §§ 11-12)

The prostitution statute was amended making the hiring of an adult prostitute a felony if the patron reasonably believes the prostitute to be a child under Minn. Stat. § 609.324, subd. 1(c).

Staff recommended: 1) maintaining the Severity Level 3 ranking in section 5 because the statutory maximum remains the same (5 years); and 2) that engaging or hiring a minor to engage in prostitution remain on the list of offenses in section 6 which are eligible for permissive consecutive sentences.

**Motion** to adopt the staff recommendations, subject to the Governor's approval of the bill, made by Commissioner Roy and seconded by Ms. Vang.

**Motion carried.**

2. Expanded Fifth-Degree Criminal Sexual Conduct (2015 Minn. Laws ch. 65, art. 6, § 14, expanded)

Fifth-degree criminal sexual conduct (CSC) under Minn. Stat. § 609.3451, subd. 1, was amended to include intentionally touching the body or clothing with semen.

Staff recommended: 1) maintaining the Severity Level F ranking in section 5 because the statutory maximum remains the same (7 years); and 2) that CSC 5 remain on the list of offenses in section 6 which are eligible for permissive consecutive sentences.

**Motion** to adopt the staff recommendations, subject to the Governor's approval of the bill, made by Commissioner Roy and seconded by Justice Dietzen.

**Motion carried.**

3. Felons Not to Possess Ammunition (2015 Minn. Laws ch. 65, art. 3, §§ 16-20, 26, 33)

A definition for ammunition under Minn. Stat. § 609.02, subd. 17 was added. Persons who are not allowed to possess firearms are not allowed to possess ammunition, and felons previously convicted of a crime of violence who do so are subject to the 5-year mandatory minimum prison sentence under Minn. Stat. § 609.11.

Staff recommended that sections 5.A and 5.B be amended to add "or Ammunition" after "Certain Persons Not to Have Firearms" in the existing offense titles.

**Motion** to adopt the staff recommendations, subject to the Governor's approval of the bill, made by Commissioner Roy and seconded by Ms. Vang.

**Motion carried.**

4. Suppressors (2015 Minn. Laws ch. 65, art. 3, §§ 19-20)

The bill permits firearm suppressors (formerly known as "silencers") to be possessed if lawfully possessed under federal law. The bill also amends the title of the reckless discharge offense under Minn. Stat. § 609.66 by striking "silencers" and inserting "suppressors." The law clarifies that it is lawful to carry a firearm in the Capitol area provided there was an issuance of a permit to carry.

Staff recommended that sections 5.A and 5.B be amended to change "Silencer" to "Suppressor" in the existing offense titles.

**Motion** to adopt the staff recommendations, subject to the Governor's approval of the bill, made by Justice Dietzen and seconded by Sgt. Ford.

**Motion carried.**

5. Expanded Financial Transaction Card Fraud (2015 Minn. Laws ch. 78, § 60)

Financial Transaction Card Fraud was amended to include trafficking of SNAP (Supplemental Nutrition Assistance Program) benefits.

Staff recommended continuing to rank financial transaction card fraud at Severity Level 2 when the value was at \$2,500 or less but more than \$250; Severity Level 3 when the value was more than \$2,500; and Severity Level 5 when the value was more than \$35,000.

**Motion** to adopt the staff recommendations, subject to the Governor's approval of the bill, made by Judge Lennon and seconded by Judge Schellhas.

**Motion carried.**

6. Wrongful Employment at a Child Care Center (2015 Minn. Laws ch. 78, § 59)

A new felony was created for wrongful employment at a child care center under Minn. Stat. § 609.816. It was explained that one of the responsibilities of the

Commission was to assign severity-level rankings to new crimes and to consider whether they should be added to the list of offenses eligible for permissive consecutive sentences. The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

Staff recommended adding “609.816, Wrongful Employment at a Child Care Center” to the Theft Offense List in Section 7, and referencing the new offense in section 5.B at Severity Level 3 (statute number 609.816, offense title “Wrongful Employment at a Child Care Center (Over \$5,000)”) and Severity Level 2 (statute number 609.816, offense title “Wrongful Employment at a Child Care Center (\$5,000 or Less)”).

**Motion** to adopt the staff recommendations, subject to the Governor’s approval of the bill, made by Justice Dietzen and seconded by Ms. Vang.

**Motion carried.**

7. New gross misdemeanor offenses (2015 Minn. Laws ch. 65, art. 3, § 31, and 2015 Minn. Laws ch. 65, art. 6, §§ 3 & 17)

Two gross misdemeanor offenses were created and one offense was amended to include a new gross-misdemeanor level. Executive Director Reitz explained that staff brought these offenses to the Commission’s attention because gross misdemeanors are used in the calculation of an offender’s Criminal History Score. The new gross misdemeanors were: 1) purchasing firearm on behalf of ineligible person (2015 Minn. Laws ch. 65, art. 3, § 31) under Minn. Stat. § 624.7133; and 2) adulteration of bodily fluids (2015 Minn. Laws ch. 65, art. 6, § 17) under Minn. Stat. § 609.688. Reckless driving was enhanced to a gross misdemeanor when death or great bodily harm results (2015 Minn. Laws. Ch. 65, art. 6, § 3).

Staff recommended that the Commission discuss the amendments made to reckless driving to consider whether it wished to treat the crime like traffic gross misdemeanors or like gross misdemeanor DWIs and non-traffic gross misdemeanors.

If the Commission wished that an offender receive a custody status point for being in a custody status for gross misdemeanor reckless driving, staff

recommended changing section 2.B.2.a.(3)(iv) to “gross misdemeanor driving while impaired, ~~or~~ refusal to submit to a chemical test, or reckless driving; or”.

If the Commission wished that gross misdemeanor reckless driving may contribute to an offender’s criminal history score, staff recommended renumbering section 2.B.3.a.(5) as 2.B.3.a.(6), and inserting the following new section 2.B.3.a.(5): “gross misdemeanor reckless driving”.

**Motion** made by Sgt. Ford and seconded by Ms. Vang, subject to the Governor’s approval of the bill, to treat reckless driving like gross misdemeanor DWIs and non-traffic gross misdemeanors.

A discussion ensued.

**Motion carried**, with Ms. Middlebrook opposed.

8. Other crime changes presented to the Governor not requiring the Commission’s action.

Staff discussed the reduction in the alcohol concentration level required to enhance DWI offenses in the third and second degree, and the creation of the affirmative defense of industrial hemp possession to a prosecution for marijuana possession. No action was recommended or taken regarding these topics.

- C. Technical Modifications to the Sentencing Guidelines – 2015 Revisor’s Instruction and Other Staff Recommendations

The Executive Director outlined three suggested technical changes to the Guidelines.

1. Change to Headnote for Minn. Stat. § 609.713

A Revisor of Statutes instruction in 2015 Minn. Laws ch. 21, art. 1, § 109, subd. 10, changed the headnote for Minn. Stat. § 609.713 from “Terroristic Threats” to “Threats of Violence.”

Staff recommended changing “terroristic threats” to “threats of violence” wherever appearing in the Guidelines and Commentary. In sections 5.A and 5.B and Appendix 3, staff recommended changing the offense referenced by Minn. Stat. § 609.713, subd. 1, to “Threats of Violence (Terror/Evacuation)”; by subd. 2 to “Threats of Violence (Bomb Threat)”; and by subd. 3(a) to “Threats of Violence (Replica Firearm)”.

**Motion** to adopt the staff recommendations made by Justice Dietzen and seconded by Ms. Middlebrook.

**Motion carried.**

## 2. Criminal Damage to Property

Absent a risk of bodily harm, felony criminal damage to property in the first degree is ranked at Severity Level 2. Criminal damage to property in the second degree involves the intentional causes to damage because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability. Because the descriptive titles in section 5 are incomplete, they may cause confusion.

In sections 5.A and 5.B, staff recommended changing the offense referenced by Minn. Stat. § 609.595, subd. 1(1) to “Damage to Property 1st Degree (Risk Bodily Harm)”; by subd. 1(2), (3), & (4) to “Damage to Property 1st Degree (Common Carrier/\$1,000/\$500 and subsequent)”; and by subd. 1a(a) to “Damage to Property 2nd Degree (Motivated by Bias)”.

**Motion** to adopt the staff recommendations made by Sgt. Ford and seconded by Judge Schellhas.

**Motion carried.**

## 3. Expunged Records

A comment in Guidelines section 2.B related to access to expunged records should be updated to delete references to expired statutory language.

Staff recommended deleting the language in comment 2.B.03 up to, and including, “Effective January 1, 2015,”; beginning the comment with the following: “Minn. Stat. § 609A.03, subd. 7a(b), provides, in part ~~that:~~”; and deleting the semicolon and adding a period at the end of the comment.

**Motion** to adopt the staff recommendations made by Ms. Vang and seconded by Justice Dietzen.

**Motion carried.**

## **8. Possible Change in Meeting Day and Time**

This was on the agenda as a possible action item. Members discussed changing the monthly meeting date from the third Thursday of the month.

**Motion** to hold the Commission meetings on the fourth Wednesday of the month beginning July 22, 2015, made by Judge Schellhas and seconded by Justice Dietzen.

**Motion carried.**

It was noted that the fourth Wednesday of the month falls the day before major holidays in November and December. The Chair said that rescheduling the November and December meetings could be discussed in September.

## **9. Factors Not to be Used as Reasons for Departure**

This was on the agenda as a possible action item. The item was previously on the agenda April 16, 2015, at which time the Commission requested staff to redraft Section 2.D.2.b and contact the Commissioner of Human Rights regarding Section 2.D.2.a, for acceptable language in accordance with Minn. Stat. Ch. 363A. Director Reitz gave a presentation on impermissible reasons for departure and the Commission discussed the issue.

**Motion** made by Commissioner Roy and seconded by Justice Dietzen to table further discussing on impermissible reasons for departure and to direct the Commission's Counsel to conduct legal research on impermissible reasons for departure and the staff to consult other states to determine which reasons for departure are impermissible.

**Motion carried.**

## **10. Public Input**

The Chair recognized members of the public including Commissioner of Human Rights Kevin Lindsey who wished to thank the Commission and staff for making time for the discussion about impermissible reasons for departure and for seeking his advice.

## **11. Executive Director's Report**

The Executive Director explained that a delegation of authority was signed by the Chair entrusting powers and duties to the Executive Director to execute contracts and sign purchasing documents on behalf of the agency. The document will be filed with the Secretary of State's Office.

## **12. Adjournment**

Before adjournment, the Chair recognized Commissioner Roy who wished to add to a future meeting agenda, an informed discussion of the Commission's fourth principle in sec. 1.A.4, related to state and local correctional resources being finite.

**Motion** to adjourn made by Justice Dietzen and seconded by Yamy Vang.

**Motion carried.**

The meeting adjourned at 3:56 p.m.