

**Minnesota Sentencing Guidelines Commission**  
**Approved Meeting Minutes**  
**June 11, 2009**

The Commission meeting was held on June 11, 2009, at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Commissioner of Corrections Joan Fabian, Tracy Jenson, Judge Gordon Shumaker, Justice Helen Meyer, Judge Edward Cleary, and Darci Bentz. Executive Director Suzanne Alliegro and MSGC staff members Jill Payne, Anne Wall, Bethany Habinek, and Jeff Holtz were present. Also in attendance was Jim Early from the Minnesota Attorney General's Office.

**I. Call to Order**

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

**II. Approval of Meeting Minutes from April 23, 2009**

**Motion** was made by Commission member Tracy Jenson to approve the minutes from April 23, 2009, and was seconded by Justice Meyer.

**Motion carried** without dissent.

**III. Executive Director's Report**

**A. Training**

Executive Director Suzanne Alliegro reported that, while in-person guidelines training will continue as much as possible, new modes of training will become available. Staff member Linda McBrayer is working to develop a few short videos on selected material which will be posted on the MSGC and DOC websites. Online tutorials will also be included to further assist in training and daily questions. The courts will be holding a one day training session on sentencing pronouncement practices and data entry issues. MSGC will assist in developing the training.

## **B. Legislative Update**

Director Alliegro announced that MSGC will see a \$5,000 per year reduction from the current budget. MSGC is prohibited from using any of the money for motor vehicles or out-of-state travel that is not directly connected to the core functions of the Commission. Ms. Alliegro further summarized a few items from the public safety omnibus bills. The reporting requirements for out-of-state juvenile placements were repealed. In addition, all annual legislative reports of criminal justice agencies may be submitted electronically. These two items combined will save MSGC approximately \$1,500 a year.

The public safety omnibus budget bill included amendments to Fifth – Degree Controlled Substance crimes for repeat offenders. The substantive changes being made are to convert the current mandatory minimum sentence of six months in a local correctional facility for repeat offenders from an unwaivable to a waivable one. Further, the language in the bill stated that “sentencing a person in this manner is a departure from the sentencing guidelines.” Director Alliegro noted that, according to sentencing guidelines policy, this is not a departure since the mandatory minimum for repeat offenders is jail and not prison. The conflict between the statutory language and guidelines policy is assumed to be unintentional.

Staff recommended that legislation be pursued next session which would delete the language pertaining to the sentencing guidelines. Staff further recommended that judges be notified of the conflict between statute and guidelines policy and be advised not to send departure reports for these cases. Staff will monitor fifth-degree controlled substance cases in which there is a prior drug conviction and whether or not the offenders received at least 180 days in order to provide information on mandatory minimum sentences in the event asked by the Legislature.

**Motion** was made by Justice Meyer and seconded by Judge Shumaker to follow staff recommendation regarding repeat drug offenders.

**Motion carried** without dissent.

#### **IV. Review Legislative Amendments Affecting the Sentencing Guidelines – Move to Public Hearing (Action item)**

##### **A. Predatory Offenders Required to Register – Prohibited From Accessing Social Networking Websites**

Predatory offenders who are required to register with the BCA and are on intensive supervised release will be prohibited from accessing social networking websites. M.S. § 243.166, subd. 5, states that a person required to register who knowingly violates any of the provisions of the statute is guilty of a felony. The law is effective August 1, 2010, and applies to offenders on intensive supervised release on or after that date.

The Commission needed to decide if it wished to change the ranking of Failure to Register as a Predatory Offender, which includes all violations of M.S. §243.166, or change the permissive consecutive list, based on this amendment. Since this provision expands the scope of an existing offense, staff proposed that there be no changes to the sentencing guidelines as a result of the statutory amendments.

**Motion** was made by Judge Shumaker and seconded by Commissioner Fabian to adopt staff recommendation for predatory offenders and move to the public hearing notice.

**Motion carried** without dissent.

##### **B. Sexual Contact Definition**

The definition of “sexual contact” when applied to Criminal Sexual Conduct Second- and Fourth-Degree offenses is expanded to include the intentional touching of the victim’s body or clothing with seminal fluid. The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to change the rankings of Criminal Sexual Conduct Second- and Fourth-Degree, or change the permissive consecutive list, based on this amendment. Since this provision expands the scope of an existing offense, staff proposed that there be no changes to the sentencing guidelines as a result of the statutory amendments.

**Motion** was made by Judge Shumaker and seconded by Judge Cleary to adopt staff recommendation for Criminal Sexual Conduct Second- and Fourth-Degree and move to the public hearing notice.

**Motion carried** without dissent.

### **C. Electronic Solicitation of Children – Expansion of Crime**

This bill expands the means by which someone can commit electronic solicitation of children for sexual conduct by adding “an electronic communications system, or a telecommunications, wire, radio communications system or other electronic device capable of electronic data storage or transmission.” The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to change the ranking of Internet or Computer Solicitation of Children, or change the permissive consecutive list, based on this amendment. Since this provision expands the scope of an existing offense, staff proposed that there be no changes to the sentencing guidelines as a result of the statutory amendments.

**Motion** was made by Commissioner Fabian and seconded by Commission member Darci Bentz to adopt staff recommendation regarding Internet or Computer Solicitation of Children and move to the public hearing notice.

**Motion carried** without dissent.

### **D. Aggravating Factors**

This provision amends language in the sentencing hearing; deviation from guidelines section, M.S. §244.10, by adding a subdivision to include possible “aggravating factors” in cases for which aggravated departures are being considered. The subdivision also states that “[n]othing in this section limits a court from ordering an aggravating sentence based on an aggravating factor not described in paragraph (a).” The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to change the list of aggravating factors in Section II.D.2.b so that it includes all factors found in M.S. §244.10. Staff recommended adopting proposed language (below) to be consistent with new statutory provision.

***Proposed Language***

***Guidelines Section II.D.2:***

2. *Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:*

a. *Mitigating Factors:*

....

b. *Aggravating Factors:*

....

(13) The offense was committed in the presence of a child.

(14) The offense was committed in a location in which the victim had an expectation of privacy.

**Motion** was made by Judge Shumaker and seconded by Judge Cleary to adopt staff recommendation regarding aggravating factors and move to the public hearing notice.

**Motion carried** without dissent.

**E. Financial Exploitation of Vulnerable Adult – over \$35,000**

This bill amends M.S. §609.2335 by expanding the definition of the offense to anyone who “(ii) uses, manages, or takes either temporarily or permanently the real or personal property or other financial resources of the vulnerable adult, whether held in the name of the vulnerable adult or a third party, for the benefit of someone other than the vulnerable adult; or (iii) deprives either temporarily or permanently a vulnerable adult of the vulnerable adult’s real or personal property or other financial resources, whether held in the name of the vulnerable adult or a third party, for the benefit of someone other than the vulnerable adult.” The additional provisions are gross misdemeanor

offenses. It also provides for sentencing under M.S. §609.52, subd.3(1) when the amount of financial exploitation exceeds \$35,000. The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished for the gross misdemeanor provisions of M.S. §609.2335 to be added to the Misdemeanor and Gross Misdemeanor Offense List, based on the expanded definition of the offense. It also needed to decide how it would like to rank financial exploitation over \$35,000.

Staff offered recommendations for the Commission to consider regarding this amendment. First, because theft of moveable property (M.S. §609.52, subd. 2(1)) is on the Misdemeanor and Gross Misdemeanor List, and this offense is considered more serious (given how the Commission ranks felony violations of M.S. §609.2335), it was recommended that the gross misdemeanor be added to the Misdemeanor and Gross Misdemeanor Offense List.

**Motion** was made by Judge Shumaker and seconded by Commission member Darci Bentz to adopt staff recommendations for the Misdemeanor and Gross Misdemeanor List and move to the public hearing notice.

**Motion carried** without dissent.

The second recommendation was to rank financial exploitation over \$35,000, at severity level VII, based on past practice of ranking exploitation of vulnerable adult offenses higher than equivalent dollar value theft offenses. At this severity level, the offense would be a presumptive commit at a criminal history score of 3.

**Motion** was made by Judge Shumaker and seconded by Commissioner Fabian to adopt staff recommendations for severity level ranking and move to the public hearing notice.

**Motion carried** without dissent.

## F. Escape from the Sex Offender Program

This bill clarifies that the definition of Escape from Civil Commitment in M.S. §609.485 includes both persons who escape while a client of the Minnesota sex offender program as defined in section 246B.01, subdivision 1a, and persons subject to a court hold order under section 253B.185, because they are being petitioned for civil commitment. This law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to change the ranking of this Escape offense, or change the language in the permissive consecutive section of the Guidelines, based on this amendment. Since this provision expands the scope of an existing offense, staff proposed that there be no changes to the sentencing guidelines as a result of the statutory amendments.

**Motion** was made by Commission member Tracy Jenson and seconded by Commissioner Fabian to adopt staff recommendations for Escape from Civil Commitment and move to the public hearing notice.

**Motion carried** without dissent.

## G. Sex Trafficking

This bill expands the definitions of labor and sex trafficking to include receiving profit or anything of value that is derived from one of the prohibited acts. Currently, sex trafficking is considered a form of promotion of prostitution (per M.S. §609.322). This provision enhances the penalties for solicitation, inducement and promotion of prostitution if the offense is committed through engaging in sex trafficking and there is an aggravating factor present (see below for statutory language).

Statutory language regarding aggravating factors:

***609.322 SOLICITATION, INDUCEMENT, AND PROMOTION OF PROSTITUTION; SEX TRAFFICKING.***

***Subdivision 1. Individuals under age 18 Solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree. (a) Whoever, while acting other than as a prostitute or patron, intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than ~~\$40,000~~ \$50,000, or both:***

*1) solicits or induces an individual under the age of 18 years to practice prostitution;*  
*(2) promotes the prostitution of an individual under the age of 18 years; ~~or~~*  
*(3) receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years; or*  
*(4) engages in the sex trafficking of an individual under the age of 18 years.*  
*(b) Whoever violates paragraph (a) or subdivision 1a may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$60,000, or both, if one or more of the following aggravating factors are present:*  
*(1) the offender has committed a prior qualified human trafficking-related offense;*  
*(2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;*  
*(3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or*  
*(4) the offense involved more than one sex trafficking victim.*

It also adds convictions for prostitution offenses involving sex trafficking to the list of “Crimes of Violence” in M.S. §624.712 for which upon conviction, felons are prohibited from possessing firearms. The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to consider its current rankings and the new penalty for the presence of aggravating factors described in M.S. §609.322, subd.1(b). It also needed to decide if it wished to change the permissive consecutive list.

Staff offered recommendations for the Commission to consider regarding this amendment. First, anyone who is convicted of subd. 1(b) of this statute has an additional 24 months added to their presumptive sentence (due to the increased statutory maximum). This length is consistent with the modifier of Crime for the Benefit of a Gang when the victim is under 18 years old.

### **Proposed Language**

#### **Guidelines Section II.G: . . . .**

For persons sentenced under Minn. Stat. § 609.322, subd. 1(b) – Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking – the presumptive sentence is determined by the sentencing guidelines grid cell defined by the offender’s criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 24 months. If the underlying crime is an attempt or conspiracy, the presumptive duration includes an additional 12 months instead.

**Motion** was made by Judge Shumaker and seconded by Judge Cleary to adopt staff recommendations regarding modifiers and move to the public hearing notice.

**Motion carried** without dissent.

Second, because M.S. §§609.322, subd. 1(a) and subd. 1a are currently on the permissive consecutive list, staff recommended adding M.S. §609.322, subd. 1(b) to the list, as well.

**Motion** was made by Commission member Tracy Jenson and seconded by Commission member Darci Bentz to adopt staff recommendation for the permissive consecutive list and move to the public hearing notice.

**Motion carried** without dissent.

#### **H. New Misdemeanor/Gross Misd. Offenses**

##### a) M.S. §626.863 – Unauthorized Practice

Minn. Stat. §626.863 was amended to add a new misdemeanor offense for a peace officer who “authorizes or knowingly allows a person to” falsely represent themselves as a peace officer (paragraph (a) of same statute). A second violation of this statute is a gross misdemeanor. The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to add the new misdemeanor/gross misdemeanor to the Misdemeanor and Gross Misdemeanor Offense List. Given the narrow scope and that it is not a person offense, staff recommended that the Commission not add this offense to the Misdemeanor and Gross Misdemeanor List.

**Motion** was made by Commission member Darci Bentz and seconded by Justice Meyer to adopt staff recommendations for the Misdemeanor and Gross Misdemeanor List and move to public hearing notice.

**Motion carried** without dissent.

b) M.S. §609.857 – Discharging a Laser at an Aircraft

This bill created a new gross misdemeanor offense for “whoever knowingly aims and discharges a laser or other device that creates visible light into the cockpit of an aircraft that is in the process of taking off or landing or is in flight.” This law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to add the new misdemeanor/gross misdemeanor to the Misdemeanor and Gross Misdemeanor Offense List. Because of the public safety issue created by this offense, staff recommended that the Commission add it to the Misdemeanor and Gross Misdemeanor List.

**Motion** was made by Justice Meyer and seconded by Judge Shumaker to adopt staff recommendations for the Misdemeanor and Gross Misdemeanor List and move to the public hearing notice.

**Motion carried** without dissent.

c) M.S. §16A.139 – Misappropriation of Money by State Officials

Minn. Stat. §16A.139 was amended to clarify that a violation of this statute is a gross misdemeanor offense. Currently, the statute states that the activities described within the statute are illegal, but no penalty is assigned. The law is effective August 1, 2009, and applies to offenses committed on or after that date.

The Commission needed to decide if it wished to add the new gross misdemeanor to the Misdemeanor and Gross Misdemeanor Offense List. Given that no other crimes against government are included on the Misdemeanor and Gross Misdemeanor List, staff recommended not adding this offense to the Misdemeanor and Gross Misdemeanor List.

**Motion** was made by Judge Shumaker and seconded by Commissioner Fabian to adopt staff recommendation for the Misdemeanor and Gross Misdemeanor List and move to the public hearing notice.

**Motion carried** without dissent.

**V. Draft Non-Legislative Modifications to the Sentencing Guidelines – Move to Public Hearing (Action item)**

**A. Possible Non-Legislative Modifications to the Sentencing Guidelines – Effective August 1, 2009**

**1. Single Course of Conduct Exceptions/Policy Consistency**

Staff discussed an issue regarding policy consistency for the Commission to consider. The sentencing guidelines have exceptions to the rule for when previous convictions can count in an offender's criminal history. These "exceptions" relate to multiple sentences arising from single behavioral incidents where offenses involved Meth crimes with children/vulnerable adults present, burglary, or kidnapping (Minn. Stats. §§ 152.137, 609.585 or 609.251). Under these circumstances, the conviction and sentence for the "earlier" offense should not be included in the criminal history. If an offense is not part of the "exception," the criminal history for the "earlier" offense should be used in the criminal history.

Previous Commissions have reviewed "double jeopardy" provisions in Minnesota Law to determine if they will be added as an exception. Practitioners sometimes question whether the Commission reviewed offenses with a double jeopardy provision or if the decision to not include an offense is an oversight. Staff recommended making the language consistent between sections.

Judge Shumaker pointed out that the issue of "double jeopardy" has come up fairly often in appeals, but there is a reason as to why the language is not in the guidelines. Justice Meyer questioned the meaning of the Commission's silence on the issue and Judge Cleary asked if there has ever been a full review by the Commission. Staff noted that, while previous Commissions have reviewed case by case instances of this issue, there has never been a full review. The current Commission does not need to comment on this right away. Chair Edblad suggested that the Commission not address this as part of the public hearing. All Commission members agreed.

**B. Possible Non-Legislative Modifications to the Sentencing Guidelines –  
Effective August 1, 2010**

**1. Change the Misdemeanor/Gross Misdemeanor List**

Staff discussed potential language modifications based on proposals reviewed by the Commission from the April 23, 2009 meeting. The proposed modifications are intended to simplify the sentencing guidelines. The first proposal involved replacing the Misdemeanor/Gross Misdemeanor List with a policy that would count all non-traffic gross misdemeanors and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10. Commission member Darci Bentz stated that the language modifications provide a good rationale and basis for the Misdemeanor/Gross Misdemeanor List. The change would give practitioners a better understanding of the list.

**Proposed Language Modification for Guidelines Section II.B.3:**

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), ~~and~~ for each non-traffic gross misdemeanor conviction and for each gross misdemeanor driving while impaired or refusal to submit to a chemical test case included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. ~~All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.~~ Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired: previous violations of Minn. Stats. §§section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation violations.
  - a. Only convictions of statutory misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), ~~and~~ non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case listed in

~~the Misdemeanor and Gross Misdemeanor Offense List (see Section V.) shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.~~

b. Any gross misdemeanor convictions resulting in misdemeanor sentences for offenses not on the targeted misdemeanor list provided in Minn. Stat § 299C.10, subd. 1(e), shall not be used to compute units.

~~b.c.~~ When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, no offender shall be assigned more than one unit.

~~\*e.d.~~ A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

#### Comment

~~***II.B.302.** As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or operation and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or operation or first degree (felony) driving while impaired.*~~

~~***II.B.303** **II.B.302.** The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI-related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.*~~

~~***II.B.304.** The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after*~~

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\* Draft language uses Sentencing Guidelines, Effective August 1, 2008. Language from other proposals is not reflected.

~~August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in H.B.1.)~~

~~**H.B.305 I.B.303.** The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to particularly relevant misdemeanors under existing state statute. The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s). Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines.~~

~~**H.B.306 I.B.304.** The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21, are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.~~

~~**H.B.307.** The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.~~

\* ~~**H.B.308 I.B.305.** The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person~~

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\* Draft language uses Sentencing Guidelines, Effective August 1, 2008. Language from other proposals is not reflected.

who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.

\* ~~**H.B.309**~~ **II.B.306.** The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.

~~**II.B.310**~~ **II.B.307.** Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02, will not be used to compute the criminal history score.

~~**II.B.311.** Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2 (1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.~~

\* ~~**II.B.312**~~ **II.B.308.** In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.

#### **Remove Misdemeanor and Gross Misdemeanor Offense List:**

##### ~~\* **Misdemeanor and Gross Misdemeanor Offense List**~~

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\* Draft language uses Sentencing Guidelines, Effective August 1, 2008. Language from other proposals is not reflected.

The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

~~Animal Fighting—Admission to an animal fight (gross misdemeanor)  
343.31 (c)~~

~~Arson in the Fourth Degree  
609.5631~~

~~Assault in the Fourth Degree  
609.2231, subd. 1, 2a, 4, 5, 6, & 7~~

~~Assault in the Fifth Degree  
609.224~~

~~Burglary in the Fourth Degree  
609.582~~

~~Carrying Pistol  
624.714~~

~~Carrying a Pistol While Under the Influence of Alcohol or a Controlled Substance  
624.7142, subd. 6(a)(b)~~

~~Certain Persons Not to Possess Firearms  
624.713, subd. 2~~

~~Check Forgery  
609.631~~

~~Computer Encryption  
609.8912~~

~~Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility)  
641.165~~

~~Contributing to Status as a Juvenile Petty Offender or Delinquency  
260B.425~~

~~Counterfeiting of Currency  
609.632~~

~~Criminal Abuse of Vulnerable Adult (bodily harm)  
609.2325, subd. 3 (a) (4)~~

~~Criminal Sexual Conduct 5th Degree  
609.3451~~

~~Criminal Vehicular Homicide or Operation (bodily harm)  
609.21, subd. 1a(d)~~

~~Damage to Property  
609.595~~

~~Dangerous Dogs—Subsequent violations (gross misdemeanor)  
347.55 (c)~~

~~Dangerous Dogs—Dog ownership prohibited (gross misdemeanor)  
347.55 (d)(e)~~

~~Dangerous Weapons  
609.66~~

~~Dealers in Scrap Metal; Records, Reports, and Registration  
325E.21~~

~~Disruption of Funeral Services  
609.501~~

~~Domestic Assault  
609.2242, subd. 1 & 2~~

~~Emergency Calls and Communications  
609.78, subd. 1~~

~~Emergency Calls and Communications—Interference (gross misdemeanor)  
609.78, subd. 2~~

~~Facilitating Access to a Computer Security System (gross misdemeanor)  
609.8913~~

~~Fleeing a Police Officer  
609.487~~

~~Furnishing Liquor to Persons Under 21  
340A.503~~

~~Fraudulent or Improper Financing Statements  
609.7475~~

~~Harassment/Stalking  
609.749, subd. 2 & 8~~

~~Indecent Exposure  
617.23~~

~~Interference with Privacy  
609.746~~

~~Letter, Telegram, or Package; Opening; Harassment  
609.795~~

~~Malicious Punishment of a Child  
609.377~~

~~Obscene or Harassing Telephone Calls  
609.79~~

~~Overworking or Mistreating Animals (second or subsequent torture or cruelty)  
343.21, subd. 9(a)~~

~~Possession of Small Amount of Marijuana in Motor Vehicle  
152.027, subd. 3~~

~~Predatory Offender Carrying a Weapon  
624.714, subd. 24~~

~~Receiving Stolen Property  
609.53~~

~~Registration of Predatory Offenders  
243.166, subd. 5~~

~~Theft  
609.52, subd. 2(1)~~

~~Torture or Cruelty to Pet or Companion Animal (substantial bodily harm)  
343.21, subd. 9(b)~~

~~Trespass (gross misdemeanor)  
609.605~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline—Without claim of right  
or consent (gross misdemeanor)  
609.6055, subd. 2(a)~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline—Underground structure  
not open to the public (gross misdemeanor)  
609.6055, subd. 2(b)~~

~~Unauthorized Computer Access  
609.891~~

~~Violation of Harassment Restraining Order  
609.748~~

~~Violating an Order for Protection or Domestic Abuse No Contact Order  
518B.01; subd. 14 & 22~~

**Add Targeted Misdemeanor List:**

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

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

Driving While Impaired

169A.20

Order for Protection Violation

518B.01

Fifth-Degree Assault

609.224

Domestic Assault

609.2242

Interference with Privacy

609.746

Harassment or Restraining Order Violation

609.748

Indecent Exposure

617.23

**Motion** was made by Judge Shumaker and seconded by Commission member Tracy Jenson to adopt the language modifications to the guidelines.

**Motion carried** without dissent.

## 2. Change the Custody Status Policy Related to Gross Misdemeanors

The second proposal involved replacing the current policy for gross misdemeanor custody status with a policy that would apply a custody point for all non-traffic gross misdemeanors and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10. This would make it consistent with the above – recommended policy change for handling misdemeanors/gross misdemeanors in criminal history.

### Proposed Language Modification for Guidelines Section II.B.2:

\* 2. One point is assigned if the offender:

- a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e); or

#### *Comment*

*II.B.202. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony, ~~or non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e)~~, which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. ~~Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded.~~ Probation, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point.*

*II.B.203. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, ~~or non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in~~*

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\* Draft language uses Sentencing Guidelines, Effective August 1, 2008. Language from other proposals is not reflected.

*Minn. Stat. § 299C.10, subd. 1(e). Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*

**Motion** was made by Judge Shumaker and seconded by Commissioner Fabian to adopt the modifications for custody status policy.

**Motion carried** without dissent.

### **3. Change the Decay Dates Used for Misdemeanors and Gross Misdemeanors**

The third proposal involved changing the start-date and end-date used to calculate the misdemeanor and gross misdemeanor decay. Staff explained that several probation officers and corrections supervisors were consulted about whether or not to change the decay dates for misdemeanor and gross misdemeanor offenses. The practitioners that were consulted supported changing the start-date as well as the end-date to be consistent with that of the felony policy. This policy would also make for a more uniform calculation of criminal history.

#### **Proposed Language Modification for Guidelines Section II.B.3:**

3. Subject to the conditions listed below, the offender is assigned one unit ....
  - c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense. ~~offender was adjudicated guilty for that offense, to the sentencing date for the current offense.~~ However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

*Comment*

*II.B.309. The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses; however, given that these offenses are less serious, the decay period is 10 years rather than 15 years. ~~Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.~~*

**Motion** was made by Commissioner Fabian and seconded by Commission member Tracy Jenson to adopt the modification for misdemeanor and gross misdemeanor decay dates.

**Motion carried** without dissent.

## VI. Public Input

No members of the public were present.

## VII. Adjournment

**Motion** to adjourn was made by Commissioner Fabian and was seconded by Judge Cleary.

**Motion approved** without dissent.

Chair Edblad stated that the meeting was adjourned at 3:18 pm.