

**Minnesota Sentencing Guidelines Commission**  
**Meeting Minutes**  
**July 22, 2010**

The Commission meeting was held on July 22, 2010, at the Department of Corrections, 1450 Energy Park Drive, Suite 200, Saint Paul, Minnesota. Commission members in attendance were Chair Jeffrey Edblad, Rev. Robert Battle, Kari Berman, Judge Edward Cleary, Commissioner of Corrections Director Joan Fabian, Sheriff Brad Gerhardt, Tracy Jenson, and Justice Helen Meyer. Executive Director Suzanne Alliegro, MSGC staff members Jill Payne and Anne Wall, and Jim Early from the Minnesota Attorney General's Office were also in attendance.

**1. Call to Order**

The meeting was called to order by Chair Edblad at 2:00 p.m.

**2. Approval of Meeting Minutes from May 20, 2010**

**Motion** was made by Justice Meyer and seconded by Sheriff Gerhardt to approve the minutes from May 20, 2010.

**Motion approved** without dissent.

**3. Executive Director's Report**

Suzanne Alliegro gave her executive director's report.

• **Minnesota Sex Offender Program Legislative Study**

Ms. Alliegro explained that the 2010 Legislature has mandated the Department of Human Services to report on several issues relating to sex offenders in Minnesota: a study of bed space options, an examination of civil commitment, sex offender treatment, perpetration prevention and sentencing for sex offenders. Ms. Alliegro explained that, during the 2010 Legislative Session, there was a great deal of interest in determining

ways to reduce costs for people who are civilly committed to Moose Lake Regional Treatment Center.

An advisory group to oversee the study first met on July 12, 2010. Topical teams were formed around each area of interest and teams were given the assignment of submitting outlines for completing their charges by mid-August. A second meeting of the advisory group is scheduled for September 2010, and a final meeting and presentation is planned for December 2010. Commission member Connie Larson sits on the advisory group and Ms. Alliegro is assigned to the sex offender sentencing team.

The sex offender sentencing team is chaired by Rep. Michael Paymar and Rep. Debra Hilstrom. The team will summarize Minnesota's and other state's current sex offender sentencing policies and propose sentencing options including proposing specific legislative changes.

- **Reformatted Sentencing Guidelines**

Over the past month, technical writer Teeghan Parfitt has worked with MSGC staff to reformat the sentencing guidelines. Section headers were left-justified for easier readability, more tables were introduced, existing tables were broken up with shading, the front cover page was updated, long paragraphs were separated with bullet points, etc.

The commission was presented with examples of the redrafted sentencing guidelines scheduled to go into effect August 1, 2010. Executive Director Alliegro indicated that the first set of changes are not substantive, but they will be more so during the second phase of the project i.e., when the guidelines are rewritten.

Justice Meyer questioned using bullet points because it might create a problem when referencing sections of the sentencing guidelines in court opinions. The commission agreed that it was preferable to use numbers or letters for reference. Staff explained that the more substantive changes (such as adding numbering) would take place in the second phase of the project.

Commission members asked staff to e-mail them the draft format changes in their

entirety for comment and to keep them apprised of all the draft changes to the guidelines. If upon review of the proposed changes, any commission member objects, the changes will not be included.

- **Victim Letter**

Ms. Alliegro received a letter dated July 12, 2010, from Cindy Notch. Ms. Notch is the sister to Todd Bernard who was assaulted and later died of his injuries. His assaulter, William Dee Barnett, was convicted of unintentional murder in the second degree and sentenced by Judge Van de North to 22 ½ years prison.

Ms. Notch suggests four things to reduce medical costs to Minnesota; two of which deal more directly with the commission and raising sentences for repeat offenders: 1) The sentencing guidelines grid durations should be increased for offenders with criminal history scores of 3 or more; and 2) The discrepancy in sentence-length should be reduced for murder ranked at severity level 10 (unintentional murder) and murder ranked at severity level 11 (intentional murder, but not premeditated), because “murder is murder.”

Chair Edblad suggested that the executive director draft a reply to Ms. Notch, thanking her for her letter and acknowledging her concerns and inviting her to a commission meeting to address her concerns and suggestions. The chair wanted to make it clear to Ms. Notch that the commission has oversight on the above mentioned suggestions only; therefore, a broad discussion of medical assistance costs is out of the commission’s purview.

- **Staffing**

Ms. Alliegro reported that two entry-level research analysts had resigned since May 2010. One entry-level researcher was hired in July; the other position will be left open. Ms. Alliegro explained that the decision to not fill the other entry-level position was driven by the fact that much of the entry-level research work (manual entry of sentencing information into the MSGC database) has been automated since December 2009. MSGC is now getting monthly downloads of the trial courts disposition data through the courts data warehouse (MNJAD). Some salary savings will be used to fund a senior research analyst who is returning full-time from three-quarter time.

Commissioner of Corrections Fabian commended Ms. Alliegro on her fiscally-responsible management-style.

**4. Approval of modification to the sentencing guidelines**

The chair indicated that the public hearing was held on July 15, 2010, in room 112 of the State Capitol Building, 75 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, and that there were no members of the public present at the public hearing who wished to speak regarding the proposed modifications. The record was held open for five business days following the public hearing to accept written testimony. MSGC staff indicated that no testimony was received at the commission's offices. The commission was presented with the following proposed modifications to the sentencing guidelines and commentary: legislative (A), non-legislative (B), and technical (C).

**A. New and amended crimes passed by the 2010 Legislature - Effective August 1, 2010**

**1. Dangerous weapons on school property**

The commission proposes raising the severity level for possession of a dangerous weapon on school property to severity level 4.

**Proposed Sentencing Guidelines Modifications:**

***V. OFFENSE SEVERITY REFERENCE TABLE***

I Dangerous Weapons on School Property - 609.66, 1d(a)

IV Dangerous Weapons on School Property - 609.66, subd. 1d(a)

**NUMERICAL REFERENCE OF FELONY STATUTES**

<b>STATUTE</b>	<b>OFFENSE</b>	<b>SEVERITY LEVEL</b>
609.66 subd. 1d(a)	Dangerous Weapons on School Property	<del>1</del> <u>4</u>

**2. Identity theft**

The commission proposes ranking unlawful possession or use of scanning device or reencoder at severity level 2.

**Proposed Sentencing Guidelines Modifications:**

**V. OFFENSE SEVERITY REFERENCE TABLE**

<b>II</b>	<u>Unlawful possession or use of scanning device or reencoder - 609.527, subd. 5b</u>
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**NUMERICAL REFERENCE OF FELONY STATUTES**

<b>STATUTE</b>	<b>OFFENSE</b>	<b>SEVERITY LEVEL</b>
<u>609.527, subd. 5b</u>	<u>Unlawful possession or use of scanning device or reencoder</u>	<u>2</u>

**3. Domestic abuse-related provisions**

The commission proposes technical modifications to domestic abuse-related offenses.

**Proposed Sentencing Guidelines Modifications:**

**V. OFFENSE SEVERITY REFERENCE TABLE**

<b>V</b>	<del>Harassment</del> /Stalking (third or subsequent violations) – 609.749, subd. 4(b) <del>Harassment</del> /Stalking (pattern of <u>stalking harassing</u> conduct) - 609.749, subd. 5
<b>IV</b>	<del>Harassment</del> /Stalking (aggravated violations) - 609.749, subd. 3(a),(b) <del>Harassment</del> /Stalking (2 <sup>nd</sup> or subsequent violation) - 609.749, subd. 4(a)  Violation of a Domestic Abuse No Contact Order – <u>629.75, subd. 2(d)</u> <del>518B.01, subd. 22(d)</del>

**VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES**

609.749, subd. 3	<del>Harassment</del> /Stalking (Aggravated Violations)
609.749, subd. 4	<del>Harassment</del> /Stalking (Subsequent Violations)
609.749, subd. 5	<del>Harassment</del> /Stalking (Pattern of Conduct)
<u>629.75, subd. 2(d)</u> <del>518B.01, subd. 22(d)</del>	Violation of a Domestic Abuse No Contact Order

**NUMERICAL REFERENCE OF FELONY STATUTES**

609.749 subd. 3(a)(b)	<del>Harassment</del> /Stalking (aggravated violations)	4
609.749 subd. 4(a)	<del>Harassment</del> /Stalking (2 <sup>nd</sup> or subsequent violations)	4
609.749 subd. 4(b)	<del>Harassment</del> /Stalking (3 <sup>rd</sup> or subsequent violations)	5
609.749 subd. 5	<del>Harassment</del> /Stalking (pattern of conduct)	5
<u>629.75, subd. 2(d)</u> <del>518B.01 subd. 22(d)</del>	Violation of a Domestic Abuse No Contact Order	4

**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:

Order for Protection Violation †  
518B.01; 629.75

\*According to the MN Bureau of Criminal Apprehension, this includes violations of domestic abuse no contact orders under M.S. § 518B.01, subd. 22, which was re-codified to M.S. § 629.75, effective August 1, 2010 (2010 Minn. Session Laws, Ch. 299, section 14).

**Comment Section II.D**

*II.D.206. The aggravating factor involving bias motivation under Section II.D.2.b.(11) cannot be used when a person has been convicted under a statute that elevated the crime to a felony offense because of bias motivation, e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault), 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(1) (~~harassment~~/stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

**4. Third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities**

The commission considered amendments made to third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities (M.S. §§ 609.344, subd. 1(m) and 609.345, subd. 1(m)) and proposes to maintain the current severity level rankings and maintain the list of offenses eligible for consecutive sentencing.

**B. Non-Legislative Modifications – Effective August 1, 2010**

**1. Military veterans**

The commission proposes to add sentencing guidelines language in Section III, related to military veterans.

**Proposed Sentencing Guidelines Modifications:**

**F. Military Veterans:** The Commission recognizes that the 2008 Legislature established a provision in law relating to defendants who are military veterans which states:

“(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States. (b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.” (See, Minn. Stat. § 609.115, subd. 10.)

**F. G. Modifications:** Modifications to the Minnesota Sentencing Guidelines and associated commentary will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary that relate to clarifications of existing policy will be applied to offenders sentenced on or after the specified effective date.

## **2. Prior controlled substance offenses**

The commission proposes to modify sentencing guidelines, Section II.C, clarifying that a prior controlled substance conviction or stay of adjudication cannot “trigger” a prison sentence for a subsequent first- through third-degree controlled substance offense after 10 years have passed; consistent with M.S. § 152.01, subd. 16a.

### **Proposed Sentencing Guidelines Modifications:**

**C. Presumptive Sentence:** The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid....

When the current conviction offense is a first, second, or third-degree controlled substance crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or a similar conviction or disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. ~~A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from~~

~~convictions and dispositions under Minn. Stat. § 152.18.~~ A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence orthe stay of adjudication (Minn. Stat. §152.01 Subd.16a)....

**C. Technical Modification to the Sentencing Guidelines -  
Effective August 1, 2010**

**1. Aggravating factors for solicitation or promotion of prostitution; sex trafficking (M.S. § 609.322, subd. 1(b))**

The commission proposes an entry on the numerical reference of felony statutes table for aggravating factors for solicitation or promotion of prostitution; sex trafficking. The reference directs readers to Section II.G, which describes how to apply the four-year enhancement for the offense.

**Proposed Sentencing Guidelines Modifications:**

***NUMERICAL REFERENCE OF FELONY STATUTES***

<b>STATUTE</b>	<b>OFFENSE</b>	<b>SEVERITY LEVEL</b>
<u>609.322 subd. 1(b)</u>	<u>Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking</u>	<u>see note *</u>

\* See Guidelines Section II.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

**Motion** was made by Sheriff Gerhardt and seconded by Judge Cleary to approve the proposed modifications to the sentencing guidelines and commentary, effective August 1, 2010.

**Motion approved** without dissent.

**5. Public input**

No members of the public were present at the meeting.

**6. Adjournment**

**Motion** for adjournment was made by Tracy Jenson and was seconded by Reverend Battle.

**Motion approved** without dissent.

The August 2010, commission meeting was cancelled as there are no agenda items. The next commission meeting is tentatively scheduled for September 16, 2010. Chair Edblad adjourned the meeting at 2:25 p.m.