

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
June 16, 2011

The Minnesota Sentencing Guidelines Commission (MSGC) meeting was held on June 16, 2011, in the Pung Conference Room at the Department of Corrections (DOC), 1450 Energy Park Drive, St. Paul, Minnesota. Commission members present were Chair Jeffrey Edblad, Sgt. Paul Ford, Connie Larson, Hon. Helen Meyer, DOC Commissioner Tom Roy, Hon. Gordon Shumaker, John Stuart, Sarah Walker, and Yamy Vang. MSGC staff present were Executive Director Kelly Mitchell and Jill Payne. Jim Early from the Attorney General's Office was also present. Public attendance included David Brown, Hennepin County Attorney's Office, and Kathleen Lonergan, Department of Corrections.

1. Call to Order.

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

2. Approval of Meeting Minutes from April 21, 2011.

Motion was made by Hon. Gordon Shumaker and seconded by Connie Larson to approve the minutes from April 21, 2011.

Motion carried.

3. Executive Director's Report.

Kelly Mitchell gave the Executive Director's report.

- On June 2, 2011, an orientation was held for new commission members.
- The state is facing a possible shutdown if the Legislature and Governor are unable to agree on a budget by June 30, 2011. Director Mitchell has been preparing a contingency plan for the possible shutdown. She has identified sentencing worksheet review and answering phone calls as a priority service if the courts remain open and continue with sentencing hearings. Director Mitchell has requested one FTE to cover these services in the event of a shutdown. The matter is currently before the courts for a determination of which state services would continue to operate during a shutdown.

4. Summary of Non-Legislative Modifications

For the benefit of the newly appointed commissioners, Jill Payne reviewed the prior non-legislative decisions of the commission. These items, which were approved at the October 2010 and April 2011 meetings, will be included in the proposed modifications set on for public hearing in July.

One prior decision of the commission was to clarify that a custody status point applies to an offender who was on probation for a targeted misdemeanor offense. One commissioner asked whether this proposal disproportionately weights the offense, noting that while this would result in one point for custody status, the offender would receive only a quarter point for the offense itself. Additionally, the commissioner commented that misdemeanor probation is much lighter than probation for other offenses, often consisting merely of tracking the offender on paper. Another commissioner commented that when the proposal was discussed by the prior members of the commission, the commission decided that targeted misdemeanors were more serious. Staff pointed out that the list of targeted misdemeanors is very short, so this particular provision will impact a narrow set of cases.

5. Possible Legislative Modifications to the Guidelines

The Commission reviewed new and amended crimes passed by the 2011 Legislature for consideration as to whether the offenses should be re-ranked.

- a. **Killing or harming a public safety dog (Minn. Stat. § 609.596):** The felony offense of killing or harming a public safety dog (Minn. Stat. § 609.596) was amended to include “great or substantial bodily harm.” The offense is on the unranked offense list.

Motion was brought by Commissioner Roy and seconded by Sarah Walker to keep killing or harming a public safety dog on the unranked offense list.

Motion carried.

- b. **Vulnerable Adult Abuse, Registration (Minn. Stat. § 243.166):** The law governing registration of predatory offenders was amended by adding criminal abuse of a vulnerable adult under Minn. Stat. § 609.2325, subd. 1(b) to the list of offenses for which registration is required. Failure to register as a predatory offender is ranked at severity level H on the sex offender grid and it is an eligible offense for a permissive consecutive sentence.

Motion was brought by Judge Shumaker and seconded by Justice Meyer to keep failure to register at severity level H on the sex offender grid.

Motion carried.

- c. **Fleeing Police in a Motor Vehicle (Minn. Stat. § 609.487):** The fleeing a peace officer statute (Minn. Stat. § 609.487, subd. 4) has been amended by expanding the definition to include whoever, in the course of fleeing in a motor vehicle “or subsequently by other means,” causes death or bodily injury to any person other than the perpetrator. The offenses are ranked at severity level 10 for fleeing resulting in death; severity level 6 for fleeing resulting in great bodily harm; and severity level 4

for fleeing resulting in substantial bodily harm. Fleeing a peace officer under Minn. Stat. § 609.487, subd. 4, is an eligible offense for a permissive consecutive sentence.

Motion was brought by Commissioner Roy and seconded by John Stuart to retain the current severity levels for fleeing a police officer in a motor vehicle.

Motion carried.

- d. Racketeering (Minn. Stat. §§ 609.902-904):** Theft of moveable property (under Minn. Stat. § 609.52, subd.2 (1)) was added to the list of eligible offenses in Minn. Stat. § 609.902, for which an offender can be charged with racketeering. Racketeering is on the unranked offense list.

Motion was brought by Commissioner Roy and seconded by Yamy Vang to keep racketeering on the unranked offense list.

Motion carried.

- e. Fourth Degree Assault, Assault of a Police Horse (Minn. Stat. § 609.597):** The crime of assaulting a police horse, Minn. Stat. § 609.597, has been expanded to include police horses being utilized by reserve officers. Paragraphs (1) (death or great bodily harm to the officer) and (2) (death or great bodily harm to the horse) are unranked. Paragraph (3), which involves demonstrable bodily harm to a horse is ranked at severity level 1.

Motion was brought by Judge Shumaker and seconded by Sgt. Ford to keep assault of a police horse under paragraphs (1) and (2) on the unranked offense list and assault of a police horse under paragraph (3) at severity level 1.

Motion carried.

- f. Controlled Substance Analog (Minn. Stat. § 152.01):** The Legislature created criminal penalties for the sale and possession of controlled substance analogs, which are defined as substances with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II. Analogs are defined as Schedule I controlled substances, and sale or possession of these substances can range from a controlled substance crime in the fifth-degree to a controlled substance crime in the second-degree.

A controlled substance crime in the fifth-degree (Minn. Stat. § 152.025) is ranked at severity level 2; a controlled substance crime in the fourth-degree (Minn. Stat. § 152.024) is ranked at severity level 4; a controlled substance crime in the third-degree (Minn. Stat. § 152.023) is ranked at severity level 6; and controlled substance crime in the second-degree (Minn. Stat. § 152.022) is ranked at severity level 8.

A commissioner questioned whether the legislature considered the lethality of designer drugs when enacting this provision and whether the commission should consider ranking the offense differently as a result. Another commissioner noted that it would be hard to determine the lethality of these drugs; new versions are being developed all the time. Another commissioner noted that there is a third degree murder provision for sale of a drug that results in the death of another individual.

Motion was made by Sgt. Ford and seconded by Yamy Vang to keep controlled substance offenses at their current rankings.

Motion carried.

- g. Gross Misdemeanors.** Minn. Sentencing Guidelines § II.B.3 provides that prior non-traffic gross misdemeanors shall count towards an offender's criminal history score. Director Mitchell informed the commission that the Legislature enacted the following new or amended gross misdemeanors:
- Inflicting demonstrable bodily harm on a vulnerable adult: This offense was moved from the fifth-degree assault statute (Minn. Stat. § 609.224, subd. 2(c)) to the fourth-degree assault statute (Minn. Stat. § 609.2231, subd.8).
 - Sale or possession of synthetic cannabinoids: Provides that anyone who unlawfully sells any amount of a synthetic cannabinoid is guilty of a gross misdemeanor.
 - Assaulting a reserve officer or utility and postal service employee or contractor: The fourth degree assault statute was amended so that assaulting a reserve officer or a utility or postal service employee or contractor is a gross misdemeanor.
- h. Targeted Misdemeanor.** Director Mitchell informed the commission that the definition of "targeted misdemeanor" has been expanded to include violation of a domestic abuse no contact order under Minn. Stat. § 629.75. This offense was previously defined as a targeted misdemeanor, but was missed when the provisions relating to domestic abuse no contact orders were recodified by the 2010 Legislature.

Motion was made by Yamy Vang and seconded by Connie Larson to modify the targeted misdemeanor list referenced in the sentencing guidelines as follows to reflect the change in law.

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:

....

Offense Title	Statute Number
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).

Motion carried.

6. Other Business

a. Vice-Chair Election.

Chair Edblad opened the floor for vice-chair nominations. Chair Edblad explained that by statute the Chair is a position appointed by the Governor. The Commission has traditionally elected a vice-chair to preside over meetings in the event that the chair is unavailable.

Judge Shumaker nominated Connie Larson. Judge Shumaker noted that Connie has served on the commission since 2000. She is an active participant, and attends all meetings. She is thoroughly familiar with the guidelines, and would be an excellent vice-chair. No other nominations were made. The commission unanimously approved Connie Larson's election as vice-chair.

b. Shutdown Contingency Planning and Upcoming Meeting Schedule.

Director Mitchell explained that the public hearing is scheduled for July 21, 2011, with a commission meeting to follow on July 28, 2011. In the event that the state is shutdown on July 21st, the public hearing and subsequent meeting will be cancelled and rescheduled. If the state is not shut down, the hearing and subsequent meeting will be held as planned. Chair Edblad will communicate to the members in the event of a shutdown.

Members were reminded that no quorum is necessary for the public hearing, but a quorum is necessary for the subsequent meeting. Members were also informed that the public hearing will be recorded so any members who are unable to be present for the hearing can listen to the recording.

c. Prison Visit.

Commissioner Roy asked whether members would be interested in visiting one or more prison facilities. Members were interested so Commissioner Roy will try to schedule that for the fall.

7. Public Input

There was no input from members of the public.

8. Adjournment

Motion for adjournment was made by Justice Meyer and seconded by Judge Shumaker.

Motion carried.

Chair Edblad adjourned the meeting at 2:55 p.m.