

2022 Regular Session Laws

Laws Related to Sentencing

June 6, 2022

Below are new and amended statutes or session laws enacted by the 92nd Minnesota Legislature during the 2022 Regular Session that may be of interest to the Commission.

A. Laws Not Affecting the Sentencing Guidelines

No Guidelines changes are required by the following laws, and none are recommended by staff.

1. MSGC Staff Conversion to Classified Service

Act: [2022 Minn. Laws ch. 76](#)

Description: The positions of all MSGC employees other than the executive director are converted to the classified service of the State, providing these employees with layoff protections and protections from at-will termination. This is a change from the 1978 MSGC charter statute. The Commission unanimously recommended this change.

Effective Date: July 1, 2022

2. Changes to the Minnesota Code of Military Justice

Act: [2022 Minn. Laws ch. 89](#)

Description: Jurisdiction of the Minnesota Code of Military Justice is expanded to members of the Minnesota National Guard who are traveling to or from drill or are between consecutive drill periods. Several new offenses are added to the Code: Abuse of a trainee or recruit; nonconsensual distribution of intimate images; credit-card fraud; unauthorized use of a government computer; and whistleblower retaliation.

B. Laws Affecting the Sentencing Guidelines

Staff recommends a change to the Commentary because of the following law.

1. Competency Restoration Reform

Act: [2022 Minn. Laws ch. 99, art. 1, §§ 26–42](#)

Description: Procedural rules governing adult criminal proceedings when competency to stand trial is at issue, which purport to supersede portions of [Minn. R. Crim. P. 20](#), are established in law to be codified at Minn. Stat. §§ 611.40 through 611.59. These rules arose from the work of the Community Competency Restoration Task Force, on which Commissioner Middlebrook represented the Sentencing Guidelines Commission.

Upon a finding of incompetency, the following timeframes for dismissal of charges are established, depending on whether the prosecutor files a notice of intent to prosecute once competency is restored:

- Non-targeted misdemeanors: Immediate dismissal
- [Targeted misdemeanors](#): 30 days, or 1 year if the prosecutor filed the notice within 30 days
- Gross misdemeanors: 30 days, or 2 years if the prosecutor filed the notice within 30 days
- Nonviolent felonies with a statutory maximum penalty of less than 10 years: 3 years, or 5 years if the prosecutor filed the notice within 3 years
- Nonviolent felonies with a statutory maximum penalty of 10 years or more: 3 years, or 10 years if the prosecutor filed the notice within 3 years

These timeframes do not apply to violent felonies (those listed in Minn. Stat. § [624.712, subd. 5](#), excluding drug offenses) and specified homicide offenses.

Until dismissal, the court must order an incompetent defendant to participate in a competency restoration program. Parameters for jail- and community-based competency restoration programs, including the administration of medicine, are established. If, after a year, the court finds the defendant unlikely to attain competency, the court can order the defendant to be screened for commitment, and must dismiss the case unless the defendant is charged with a violent felony or a homicide, or dismissal would endanger public safety. In those cases, the court must order the continued, indefinite supervision of the defendant. This indefinite supervision cannot continue beyond 10 years unless the charged offense is a violent crime or homicide.

The State Competency Restoration Board is established within the judicial branch (although most of its members are appointed by the Governor), with the assistance of a Certification Advisory Committee, to oversee the new forensic navigator program; to establish certification requirements for competency restoration programs; to recommend a competency restoration curriculum for defendants; and to provide or contract for unmet competency restoration services needs.

Sentencing-related provisions. The following of the act’s provisions bear most directly on sentencing:

- [Art. 1, § 28](#) restates the rule, now found in the Rules of Criminal Procedure, that an incompetent defendant may not be sentenced.
- [Art. 1, § 32](#) limits the time an incompetent defendant may be held in custody, whether in a jail-based program or in a locked treatment facility, to “the maximum sentence for the underlying charge.” In the event of sentencing, § 32 also permits the court to consider the court examiner’s recommendations in imposing a sentence, including conditions of probation.
- [Art. 1, § 37](#) requires the court to award jail credit for any time spent confined in a secured setting while being assessed and restored to competency.

Effective date: Art. 1, §§ 26 to 37—the provisions directly affecting criminal procedure and sentencing—are effective July 1, 2023, and apply to competency determinations initiated on or after that date.

Sentencing Guidelines considerations: The Sentencing Guidelines and Commentary address jail credit in [section 3.C](#). While section 3.C. does not purport to list all the “statute[s], ... rule[s], and [the] great deal of case law” that govern jail credit, it does list some. In staff’s opinion, it would be helpful to reference the new jail credit rule—established in [2022 Minn. Laws ch. 99, art. 1, § 37](#), and to be codified at Minn. Stat. § 611.51 effective July 1, 2023—in the commentary to section 3.C.

Staff Recommendation: Amend Comment 3.C.01 to reference the new jail credit rule established in [2022 Minn. Laws ch. 99, art. 1, § 37](#), as follows. A technical correction to the reference to the Rules of Criminal Procedure is also recommended.

Possible modifications to 2021 Minn. Sentencing Guidelines & Commentary, Comment 3.C.01:

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Comment

3.C.01. *Jail credit is governed by statute and rule – see, e.g., Minn. Stat. §§ 609.145 & 611.51 and Minn. R. Crim. P. 27.03, subd. 4(b) 4(B) – and a great deal of case law. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that an offender in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial.*

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