### Staff Summary of MSGC Work Plan Submissions for Discussion at Meeting on July 25, 2019

<table>
<thead>
<tr>
<th>Topic</th>
<th>Information Needed</th>
<th>Submitted by</th>
</tr>
</thead>
</table>
| Comprehensive review of child pornography rankings      | • Staff presentation of history of sex offender sentences and how current severity levels and presumptive sentences were determined.  
• Staff research of recidivism rates and sentencing for the various crimes including geographic breakdown and anomalies in methodologies that results in under-counting.  
• A meeting in which we hear from recognized experts in the field.  
• A stake-holders meeting to receive their experience and input.  
• Preparation/discussion of possible options in a staff memo.  
Additional comments: May involve revisiting/revising current sex offender sentences and the sex offender grid. Issue will likely take up most of our time this year. | Dietzen      |
| Comprehensive review of child pornography rankings      | • Data regarding sentences imposed and departure rates, and if possible, how many counts are being sentenced.                                                                                                       | Middlebrook |
|                                                        | Additional comments: Based on her experience, there are almost always multiple counts of possession.                                                                                                             |              |
| Comprehensive review of child pornography rankings      | • Testimony from victims and experts in the field.  
• Data from staff on frequency of offenses, actual sentences associated with convictions, recidivism rates, offender demographics, and the frequency of probation violations. | Omari        |
| Reducing the state’s prison population without impacting public safety. | • Review and understand the makeup of Minnesota’s prison population. Explore prison terms from the perspective of public safety and correctional efficacy.  
• Review what actually occurs during the re-incarceration of release violators, and similarly what occurs with those committed to prison following a probation violation (excluding those who committed a new offense for which guidelines calls for prison commit). | Schnell      |
<table>
<thead>
<tr>
<th>Topic</th>
<th>Information Needed</th>
<th>Submitted by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation guidelines / term limits</td>
<td></td>
<td>Honsey</td>
</tr>
<tr>
<td>Probation guidelines / term limits</td>
<td>• Review policies in other states where there are guidelines set out for probation terms; helpful for discussion to determine the extent to which the Commission wants to set out guidelines or broad policies.</td>
<td>Middlebrook</td>
</tr>
<tr>
<td>Mandatory minimum sentencing under Minn. Stat. § 609.11, subd. 5(b)</td>
<td>• Understanding statistically who is being charged along with prior criminal history.</td>
<td>Honold</td>
</tr>
<tr>
<td>Review offenses with high departure rates</td>
<td></td>
<td>Middlebrook</td>
</tr>
<tr>
<td>Review violent felonies definition</td>
<td>• Look at adopting the federal revision</td>
<td>Honsey</td>
</tr>
<tr>
<td>Theft and Theft-Related Offense Rankings</td>
<td>• Comprehensive review of the sentences imposed, recidivism rates and geographic disparities in sentences.</td>
<td>Dietzen</td>
</tr>
<tr>
<td>Theft and Theft-Related Offense Rankings</td>
<td>Additional comments: Includes review of commission practice of creating elements of sentences and potential changes.</td>
<td></td>
</tr>
<tr>
<td>Theft and Theft-Related Offense Rankings</td>
<td>• Materials similar to what we reviewed at last two meetings.</td>
<td>Middlebrook</td>
</tr>
<tr>
<td>Materials similar to what we reviewed at last two meetings.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
244.09 MINNESOTA SENTENCING GUIDELINES COMMISSION.

Subdivision 1. Commission; establishment. There is hereby established the Minnesota Sentencing Guidelines Commission which shall be comprised of 11 members.

Subd. 2. Members. The Sentencing Guidelines Commission shall consist of the following:

(1) the chief justice of the supreme court or a designee;
(2) one judge of the court of appeals, appointed by the chief justice of the supreme court;
(3) one district court judge appointed by the chief justice of the supreme court;
(4) one public defender appointed by the governor upon recommendation of the state public defender;
(5) one county attorney appointed by the governor upon recommendation of the board of directors of the Minnesota County Attorneys Association;
(6) the commissioner of corrections or a designee;
(7) one peace officer as defined in section 626.84 appointed by the governor;
(8) one probation officer or parole officer appointed by the governor; and
(9) three public members appointed by the governor, one of whom shall be a victim of a crime defined as a felony.

When an appointing authority selects individuals for membership on the commission, the authority shall make reasonable efforts to appoint qualified members of protected groups, as defined in section 43A.02, subdivision 33.

One of the members shall be designated by the governor as chair of the commission.

Subd. 3. Appointment terms. Each appointed member shall be appointed for four years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is duly appointed. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term. The term of any member appointed or reappointed by the governor before the first Monday in January 1991 expires on that date. The term of any member appointed or reappointed by the governor after the first Monday in January 1991 is coterminous with the governor. The members of the commission shall elect any additional officers necessary for the efficient discharge of their duties.

Subd. 4. Reimbursement. Each member of the commission shall be reimbursed for all reasonable expenses actually paid or incurred by that member in the performance of official duties in the same manner as other employees of the state. The public members of the commission shall be compensated at the rate of $50 for each day or part thereof spent on commission activities.

Subd. 5. Promulgation of Sentencing Guidelines. The commission shall promulgate Sentencing Guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

(1) the circumstances under which imprisonment of an offender is proper; and
(2) a presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines shall provide for an increase of 20 percent and a decrease of 15 percent in the presumptive, fixed sentence.

The Sentencing Guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

Although the Sentencing Guidelines are advisory to the district court, the court shall follow the procedures of the guidelines when it pronounces sentence in a proceeding to which the guidelines apply by operation of statute. Sentencing pursuant to the Sentencing Guidelines is not a right that accrues to a person convicted of a felony; it is a procedure based on state public policy to maintain uniformity, proportionality, rationality, and predictability in sentencing.

In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.

The provisions of sections 14.001 to 14.69 do not apply to the promulgation of the Sentencing Guidelines, and the Sentencing Guidelines, including severity levels and criminal history scores, are not subject to review by the legislative commission to review administrative rules. However, the commission shall adopt rules pursuant to sections 14.001 to 14.69 which establish procedures for the promulgation of the Sentencing Guidelines, including procedures for the promulgation of severity levels and criminal history scores, and these rules shall be subject to review by the Legislative Coordinating Commission.

Subd. 6. Clearinghouse and information center. The commission, in addition to establishing Sentencing Guidelines, shall serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding Sentencing Guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.

This information shall include information regarding the impact of statutory changes to the state's criminal laws related to controlled substances, including those changes enacted by the legislature in Laws 2016, chapter 160.

Subd. 7. Study. After the implementation of the Sentencing Guidelines promulgated by the commission, the commission shall study their impact and review the powers and duties of the commissioner of corrections.

Subd. 8. Administrative services. The commissioner of corrections shall provide adequate office space and administrative services for the commission, and the commission shall reimburse the commissioner for the space and services provided. The commission may also utilize, with their consent, the services, equipment, personnel, information and resources of other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.
Subd. 9. Funds acceptance. When any person, corporation, the United States government, or any other entity offers funds to the Sentencing Guidelines Commission to carry out its purposes and duties, the commission may accept the offer by majority vote and upon acceptance the chair shall receive the funds subject to the terms of the offer, but no money shall be accepted or received as a loan nor shall any indebtedness be incurred except in the manner and under the limitations otherwise provided by law.

Subd. 10. Research director. The commission may select and employ a research director who shall perform the duties the commission directs, including the hiring of any clerical help and other employees as the commission shall approve. The research director and other staff shall be in the unclassified service of the state and their compensation shall be established pursuant to chapter 43A. They shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees.

Subd. 11. Modification. The commission shall meet as necessary for the purpose of modifying and improving the guidelines. Any modification which amends the Sentencing Guidelines grid, including severity levels and criminal history scores, or which would result in the reduction of any sentence or in the early release of any inmate, with the exception of a modification mandated or authorized by the legislature or relating to a crime created or amended by the legislature in the preceding session, shall be submitted to the legislature by January 15 of any year in which the commission wishes to make the change and shall be effective on August 1 of that year, unless the legislature by law provides otherwise. All other modifications shall take effect according to the procedural rules of the commission. On or before January 15 of each year, the commission shall submit a written report to the committees of the senate and the house of representatives with jurisdiction over criminal justice policy that identifies and explains all modifications made during the preceding 12 months and all proposed modifications that are being submitted to the legislature that year.

Subd. 11a. [Repealed, 1997 c 239 art 3 s 25; 1Sp1997 c 5 s 5]

Subd. 12. Submission of guidelines. The guidelines shall be submitted to the legislature on January 1, 1980, and shall be effective May 1, 1980, unless the legislature provides otherwise.

Subd. 13. Rulemaking power. The commission shall have authority to promulgate rules to carry out the purposes of subdivision 5.

Subd. 14. Report on mandatory minimum sentences. The Sentencing Guidelines Commission shall include in its annual report to the legislature a summary and analysis of reports received from county attorneys under section 609.11, subdivision 10.

History: 1978 c 723 art 1 s 9; 1982 c 424 s 130; 1982 c 536 s 1-3; 1982 c 642 s 3; 1983 c 216 art 1 s 35; 1983 c 274 s 10,18; 1983 c 299 s 24; 1984 c 589 s 3-6; 1984 c 640 s 32; 1986 c 444; 1987 c 377 s 1-3; 1987 c 384 art 2 s 1; 1988 c 618 s 1; 1989 c 290 art 2 s 8; 1990 c 422 s 10; 1991 c 258 s 6; 1994 c 636 art 3 s 1; art 6 s 14; 1996 c 408 art 3 s 11; 1997 c 7 art 2 s 31; art 5 s 21; 1997 c 96 s 1; 1998 c 254 art 1 s 66; 2005 c 136 art 16 s 1,2; 2016 c 160 s 13
Staff Issue Paper

Child Pornography Review Directive

July 15, 2019

The 2019 Omnibus Public Safety and Judiciary Bill directs the Commission to comprehensively review and consider modifying how the Sentencing Guidelines address Child Pornography and Use of Minors in Sexual Performance.

Text of Directive: 2019 Minn. Laws 1st Sp. Sess. ch. 5, art. 4, § 22, reads as follows:

Sec. 22. SENTENCING GUIDELINES MODIFICATION.
The Sentencing Guidelines Commission shall comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, sections 617.246 [(use of minors in sexual performance prohibited)] and 617.247 [(possession of pornographic work involving minors)], as compared to similar crimes, including other sex offenses and other offenses with similar maximum penalties.

Staff makes several inferences from this directive, found on the following page.

Question for Discussion: What are the Commission’s first steps in meeting this new directive?

Staff Recommendation: Staff recommends that the Commission begin its comprehensive review with the following six subjects:

1. Relevant pre-enactment testimony to the Legislature
3. History and structure of the Sex Offender Grid
4. Sentencing practices for Child Pornography and Use Minors in Sexual Performance
5. Comparisons to other sex offenses and other offenses with similar statutory maximums
6. U.S. Sentencing Commission’s 2012 study on child pornography offenses & sentencing practices

Review of these subjects, which could take place over the next several meetings, would provide a solid starting point for further study or action.
Direct inferences. Staff infers the following statements from the directive’s text:

- The directive is mandatory.
- The comprehensive review must include a comparison of how the Guidelines address Child Pornography and Use of Minors in Sexual Performance vs. similar crimes.
- This comparison to the Guidelines’ treatment of “similar crimes” must include, but is not limited to, comparison to the Guidelines’ treatment of other sex offenses, as well as other offenses with similar maximum penalties.
- In addition to the comprehensive review, the Commission must consider modifying the Guidelines’ treatment of Child Pornography and Use Minors in Sexual Performance.
- No timeline or deadline is established for either the completion of the comprehensive review or the consideration of Guidelines modification.

Indirect inferences. Staff assumes the following to be implied by the directive’s language and context:

- This directive is independent of the Commission’s recent reranking decisions that resulted from changes to Minn. Stat. §§ 617.246 & 617.247, made elsewhere in the same omnibus bill.
- Because additional resources do not accompany the directive, the Legislature intends that the Commission complete the directive within its existing resources as time permits.
- Notwithstanding the absence of a reporting requirement, the Commission is to inform the Legislature of its ongoing progress and final completion in its annual Report to the Legislature.
- The “comprehensive[]” review is not necessarily limited to a mere comparison of how the Guidelines treat these offenses vs. similar crimes. The Commission may, for example, review independent research and other jurisdictions’ sentencing approaches related to such offenses.
- The product of the Commission’s review is not necessarily limited to Guidelines modification. Consistent with its statutory responsibilities (Minn. Stat. § 244.09, subd. 6), the Commission may wish to recommend statutory change—possibly in conjunction with Guidelines modification—or it may wish to take no action.
Rightsizing Minnesota’s Prison Population

Grant Duwe, Ph.D.
Director, Research and Evaluation
Minnesota Department of Corrections
July 2019

Historical Background

- Minnesota DOC
  - Prison population long been at/above bed space capacity
  - 2000s
    - Prison population grew by 62%
      - January 2000 = 5,746
      - December 2009 = 9,337
    - DOC capacity adjustments (2,000+ bed increase)
      - MCF-Rush City opened
      - Use of Prairie Correctional Facility in Appleton
      - MCF-Faribault expansion
  - 2010s
    - Capacity has been mostly static
    - Prison population has not been static
Adult Prison Population: Actual vs Projected

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual*</td>
<td>9,501</td>
<td>9,564</td>
<td>9,949</td>
<td>9,929</td>
<td>9,849</td>
<td>9,501</td>
<td>9,772</td>
<td>9,929</td>
</tr>
<tr>
<td>Projected*</td>
<td>10,119</td>
<td>10,114</td>
<td>10,111</td>
<td>10,119</td>
<td>10,114</td>
<td>10,111</td>
<td>10,119</td>
<td>10,119</td>
</tr>
</tbody>
</table>

* As of July 1 each year
** Facility Bed Space plus Work Release Capacity
*** Reflects actual bed capacity at DOC correctional facilities

Why the Recent Drop?

- Reduction in prison admissions
  - Probation Violators
  - Supervised Release Violators
- Not specific to type of offense
- Confined to certain parts of state/counties
  - Anoka
  - Dakota
  - St. Louis
  - Ramsey (PV admissions)

- How durable is this drop?
**Prison Population: Admissions and LOS**

- Two main factors affect size of prison population
  - Prison Admissions and Lengths of Stay (Sentences)
    - New Court Commitments
      - 41% of FY18 admissions
      - 76% of prison population on 1-1-2019
      - Avg. LOS = 31.4 months
    - Probation Violators
      - 23% of FY18 admissions
      - 13% of prison population on 1-1-2019
      - Avg. LOS = 9.4 months
    - Supervised Release Violators
      - 36% of FY18 admissions
      - 11% of prison population on 1-1-2019
      - Avg. LOS = 4.8 months

**Longer-Term Outlook**

- Reduction in PV/RV admissions = positive
  - Key to recent drop in prison population
    - Less daylight between capacity and population
  - Most likely to get “warehoused” → no programming
    - Worse misconduct, recidivism and employment outcomes
  - Smaller prison population
    - Less double-bunking
    - More space for programming

**Potential Concerns**

- Too reliant on policy/practice → susceptible to change
- Running out of room for further reductions
Prison Population Reduction: Why it Matters

- Overuse of prison = costly and ineffective
- Prison Population <= Capacity
  - Increased Program Dosage/Availability
    - Eliminate/greatly reduce warehousing
      - Currently ➔ about 1/3 of releases get warehoused
    - Improved Outcomes
      - Facilities ➔ less misconduct
      - Communities ➔ less recidivism and more post-release employment
        - Participation in effective program = 12% reduction in recidivism
  - Prison downsizing ➔ public safety concerns
    - Shifting more resources to community would be needed
      - Mitigate concerns from prison population reduction

How to Reduce the Prison Population

- Decrease prison admissions
  - New court commitments = Courts
    - About ¾ of prison population
  - Probation Violators = Courts & Community Corrections
    - Nearly 15% of prison population
  - Supervised Release Violators = DOC & CCA
    - Only about 10% of prison population
  - DOC is limited in extent to which it can decrease prison admissions on its own
    - Support from legislature, courts and CCA
## How to Reduce the Prison Population

### Shorten Lengths of Stay-Strategies

- **Limits/Caps for supervised release violators**
  - Example = 70 days for “first-time” violators
- **Earned compliance/”good time credit”**
  - Early release for program participation/compliant behavior
  - Similar to CIP/Work Release/CRP
- **Extended Incarceration (EI) Forgiveness**
- **Revision to 67% time served requirement**
  - 65%
  - 60%
  - 50%
  - Reduction in time served requirement only for certain inmates
  - No sex offenders or “loss of life” inmates

## Pros and Cons to LOS Reduction Strategies

### Supervised Release Violator Caps

- **Pro** = DOC has control over this
- **Cons**
  - RV admissions already have relatively short stays
  - Increases likelihood of warehousing → worse recidivism and employment outcomes
  - Minimal impact on size of prison population

### Earned Compliance/Good Time Credits

- **Pros**
  - Could be grounded in risk
  - Could have greater impact on prison population levels
- **Cons**
  - Could be grounded in risk (potential for inequities)
  - Could flip risk principle on its head
    - Prioritize lower-risk for programming
  - Would require legislative action/approval
  - Could be difficult/complicated in practice
    - Liberty interest and participation in programming
Pros and Cons to LOS Reduction Strategies

- **EI Forgiveness**
  - Pro = Controlled by DOC
  - Cons = Relatively minimal impact overall

- **Time Served Revision**
  - Pros
    - Elegant strategy for reduction
      - Relatively simple to implement
      - Also a familiar strategy to legislators
    - Could have substantial impact on size of prison population
  - Cons
    - Would require legislative action/approval
    - Retroactive application?
    - Preference to apply it only to certain inmates
      - No “loss of life” or sex offenders
      - Could also worsen disparities
2017 Sentencing Practices

Annual Summary Statistics for Felony Offenders
Sentenced in 2017

Published November 8, 2018
Updated November 16, 2018
Figure 14. Mitigated Dispositional Departure Rates for Selected Offenses Compared to Total Rate, 2017

Note: Offenses were selected based on criteria that there were 50 or more presumptive commitment cases and the mitigated dispositional departure rate was 41 percent or more.

Two of the offenses highlighted in Figure 14, assault in the second degree and failure to register as a predatory offender, have mandatory minimum sentences specified in statute, with provisions allowing for departure from those mandatory minimums.

Assault in the second degree, by definition, involves the use of a dangerous weapon and therefore carries a mandatory minimum prison sentence (Minn. Stat. § 609.11, subds. 4, 5, and 9). The second-degree assault statute proscribes a broad range of misbehavior: Injury to, or physical contact with, the victim may or may not occur, and the type of dangerous weapon involved can vary widely, from a pool cue to a knife to a firearm. Circumstances surrounding the offense can also vary significantly, from barroom brawls to unprovoked confrontations. The mandatory minimum statute specifically permits the court to sentence without regard to the mandatory minimum, provided that substantial and compelling reasons are present (Minn. Stat. § 609.11, subd. 8). It is perhaps unsurprising to find many departures in the sentencing of a crime that can be committed in many different ways.

Failure to register as a predatory sex offender also has a statutory mandatory minimum sentence, accompanied by a statutory provision that allows for sentencing without regard to the mandatory minimum (Minn. Stat. § 243.166, subd. 5(d)).

In 58 percent of the mitigated dispositional departures, the court stated that the prosecutor agreed to the departure, recommended the departure, or did not object to the departure. In 16 percent of these cases, the
Figure 19. Durational Departure Rates for Cases Receiving Executed Prison Sentences, Selected Offenses, 2017

Note: Offenses were selected based on criteria that there were 40 or more executed prison cases, and the aggravated durational departure rate was 8 percent or more or the mitigated durational departure rate was 29 percent or more.
Staff Information Paper

Selected Serious Crime Lists

July 15, 2019

This paper contains a staff-compiled list of statutory crime lists. It is an updated version of material originally presented to the Commission on November 17, 2016.

Table 1 displays the members of five statutory crime lists. Those lists are:

- “Crime[s] of violence,” as defined by Minn. Stat. § 624.712, subd. 5. Persons who possess a firearm or ammunition after having been convicted of a crime on this list face a mandatory five-year executed prison term.¹
- “Violent crime[s],” as defined by Minn. Stat. § 609.1095, subd. 1(d). Persons who repeatedly commit crimes on this list face enhanced penalties.²
- Crimes listed in Minn. Stat. § 609.11, subd. 9. Persons who commit crimes on this list while possessing or using a firearm or other dangerous weapon face mandatory prison terms.³ Persons who aid those who have committed crimes on this list may be guilty of Accomplice After the Fact.⁴ A group is not a “criminal gang” unless it has, as one of its primary activities, the commission of a crime on this list.⁵
- “Predatory crime[s],” as defined by Minn. Stat. § 609.341, subd. 22. Persons who commit crimes on this list with sexual motivation may be guilty of Criminal Sexual Predatory Conduct and face enhanced penalties (hence, sex offenses are not included on the list).⁶

¹ Minn. Stat. § 609.11, subd. 5(b).
² Minn. Stat. § 609.1095, subd. 2 & 3.
³ Minn. Stat. § 609.11, subd. 4 & 5(a).
⁴ Minn. Stat. § 609.495, subd. 3.
⁵ Minn. Stat. § 609.229, subd. 1(a).
⁶ Minn. Stat. § 609.3453.
offenders may face enhanced penalties for sex offenses if previously convicted of a crime on this list.\textsuperscript{7}

- “Heinous crime[s],” as defined by Minn. Stat. § 609.106, subd. 1(a). Persons convicted of a crime on this list must, if subsequently convicted of any degree of murder, be sentenced to the statutory maximum.\textsuperscript{8}

These five crime lists are by no means exhaustive. Other crime lists—such as lists of prior offenses that disqualify someone from licensure or employment,\textsuperscript{9} the list of qualified domestic violence-related offenses\textsuperscript{10} (which contain several non-felony offenses), and the list of offenses that require an offender to register as a predatory offender\textsuperscript{11}—might have been included, but were not. Although these five lists generally share common attributes—for example, the name or membership of most of these lists connotes violence or seriousness; each list’s members are primarily or exclusively felonies; and each list was used to enhance or create criminal penalties—these attributes might also apply to other lists.

\textbf{Table 1. Membership of Selected Serious Crime Lists.}

<table>
<thead>
<tr>
<th>Statute</th>
<th>Crime</th>
<th>624.712 Crime of Violence</th>
<th>609.1095 Violent Crime\textsuperscript{12}</th>
<th>609.11, subd. 9</th>
<th>609.341 Predatory Crime</th>
<th>609.106 Heinous Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.165</td>
<td>Possession of firearm/ammunition by one previously convicted of a crime of violence</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.185</td>
<td>Murder 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>609.19</td>
<td>Murder 2</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>609.195</td>
<td>Murder 3</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>609.20</td>
<td>Manslaughter 1</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.205</td>
<td>Manslaughter 2</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2112</td>
<td>Criminal Vehicular Homicide</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2113</td>
<td>Felony Criminal Vehicular Operation</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{7} Minn. Stat. § 609.3455, subd. 3a.
\textsuperscript{8} \textit{i.e.}, life without the possibility of release, in the case of murder in the first degree. A 15-year decay period applies. Minn. Stat. §§ 609.106, subd 2(3), & 609.107.
\textsuperscript{10} Minn. Stat. § 609.02, subd. 16.
\textsuperscript{11} Minn. Stat. § 243.166, subd. 1b(a).
\textsuperscript{12} Non-felonies, while not excluded from Minn. § 609.1095 list, are not used for § 609.1095 enhancements and are therefore excluded from this list.
<table>
<thead>
<tr>
<th>Statute</th>
<th>Crime</th>
<th>624.712 Crime of Violence</th>
<th>609.1095 Violent Crime</th>
<th>609.11, subd. 9</th>
<th>609.341 Predatory Crime</th>
<th>609.106 Heinous Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.2114</td>
<td>Criminal Vehicular Operation; Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.215</td>
<td>Aiding Suicide</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.215</td>
<td>Aiding Att. Suicide</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.221</td>
<td>Assault 1</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.222</td>
<td>Assault 2</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.223</td>
<td>Assault 3</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.2231</td>
<td>Felony Assault 4</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.224</td>
<td>Felony Assault 5</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2242</td>
<td>Felony Domestic Assault</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2247</td>
<td>Domestic Assault by Strangulation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.228</td>
<td>Distribute Drugs Causing Great Bodily Harm</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.229</td>
<td>Felony Crime Committed for Benefit of Gang</td>
<td></td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.235</td>
<td>Use Drugs to Injure or Facilitate Crime</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.24</td>
<td>Simple Robbery</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.245</td>
<td>Aggravated Robbery</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.25</td>
<td>Kidnapping</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.255</td>
<td>Felony False Imprisonment</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.2661</td>
<td>Murder 1 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2662</td>
<td>Murder 2 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2663</td>
<td>Murder 3 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2664</td>
<td>Manslaughter 1 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2665</td>
<td>Manslaughter 2 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.267</td>
<td>Assault 1 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.2671</td>
<td>Assault 2 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.268</td>
<td>Assault 3 of Unborn Child</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.322</td>
<td>Solicit, etc., Prostitution; Sex Trafficking</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

13 Gross misdemeanors are not excluded from Minn. Stat. § 609.11, subd. 9.
<table>
<thead>
<tr>
<th>Statute</th>
<th>Crime</th>
<th>624.712 Crime of Violence</th>
<th>609.1095 Violent Crime</th>
<th>609.11, subd. 9</th>
<th>609.341 Predatory Crime</th>
<th>609.106 Heinous Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>609.342</td>
<td>Criminal Sexual Conduct 1 (with force or violence)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.342</td>
<td>Criminal Sexual Conduct 1 (except sig. relationship)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.342</td>
<td>Criminal Sexual Conduct 1 (significant relationship)</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.343</td>
<td>Criminal Sexual Conduct 2 (with force or violence)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.343</td>
<td>Criminal Sexual Conduct 2 (except sig. relationship)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.343</td>
<td>Criminal Sexual Conduct 2 (significant relationship)</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.344</td>
<td>Criminal Sexual Conduct 3 (with force or violence)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.344</td>
<td>Criminal Sexual Conduct 3 (except sig. relationship et al.)</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.344</td>
<td>Criminal Sexual Conduct 3 (all other clauses)</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.345</td>
<td>Criminal Sexual Conduct 4</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.377</td>
<td>Felony Malicious Punishment of Child</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.378</td>
<td>Felony Child Neglect/Endangerment</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.485</td>
<td>Escape from Custody</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.486</td>
<td>Commit Crime with Bulletproof Vest</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.498</td>
<td>Witness Tampering 1</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.498</td>
<td>Witness Tampering Agg. 1</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.52</td>
<td>Theft of Firearm</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.52</td>
<td>Theft of Controlled Substance</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.52</td>
<td>Theft of Explosive or Incendiary Device</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.561</td>
<td>Arson 1</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.562</td>
<td>Arson 2</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.563</td>
<td>Arson 3</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.582</td>
<td>Burglary 1</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>609.582</td>
<td>Burglary 2</td>
<td>×</td>
<td></td>
<td>×</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statute</td>
<td>Crime</td>
<td>624.712 Crime of Violence</td>
<td>609.1095 Violent Crime</td>
<td>609.11, subd. 9</td>
<td>609.341 Predatory Crime</td>
<td>609.106 Heinous Crime</td>
</tr>
<tr>
<td>----------</td>
<td>-----------------------------------------------------</td>
<td>---------------------------</td>
<td>------------------------</td>
<td>-----------------</td>
<td>------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>609.582</td>
<td>Burglary 3</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.66</td>
<td>Drive-By Shooting</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.67</td>
<td>Machine Gun/Short-Barreled Shotgun</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.687</td>
<td>Adulteration</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.71</td>
<td>Riot 1 &amp; 2</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.713</td>
<td>Felony Threats of Violence</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.749</td>
<td>Felony Stalking/Harassment</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>609.749</td>
<td>Agg. Stalking/Harassment with Weapon</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>609.855</td>
<td>Shoot Public Transit Vehicle/Facility</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>624.713</td>
<td>Child Possess Pistol/Semiauto Military Weapon</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>624.713</td>
<td>Possession of firearm/ammunition by one previously convicted of a crime of violence</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.021</td>
<td>Controlled Substance Crime 1</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.022</td>
<td>Controlled Substance Crime 2</td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.023</td>
<td>Controlled Substance Crime 3</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.024</td>
<td>Controlled Substance Crime 4</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.025</td>
<td>Felony Controlled Substance Crime 5</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.0261</td>
<td>Importing Controlled Substance</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.0262</td>
<td>Possess Meth Precursors with Intent</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.0262</td>
<td>Possess Meth Precursors with Intent – Subsequent</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.027</td>
<td>Sell Synthetic Cannabinoid</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.097</td>
<td>Sell Simulated Controlled Substance</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.136</td>
<td>Sell/Misuse Anhydrous Ammonia</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>152.137</td>
<td>Meth Crime Involving Child/Vuln. Adult</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>152.33</td>
<td>Medical Cannabis Diversion/False Records</td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

14 Not counted for mandatory execution on third violent felony per § 609.1095.
Recap: Issues Related to Theft Offenses

July 22, 2019

At its meeting on May 9, 2019, staff provided the Commission with a report on several potential issues related to the Sentencing Guidelines’ treatment of theft offenses. Those issues were:

1. A few offenses on the Theft Offense List do not invoke the theft-penalty statute; these “interlopers” may need to be ranked separately.
2. The Theft Offense List’s lack of non-monetary distinctions may cause confusion.
3. Some theft offenses—particularly, some of those Theft Offenses involving non-monetary distinctions—may not be clearly ranked.
4. Guidelines § 2.A.2 may need to be rewritten.*

Several approaches may be taken to resolving these issues. Staff suggested one approach, which included uniformly applying theft-penalty distinctions, and removing the interlopers from the Theft Offense List and separately ranking them.