

Minnesota Sentencing Guidelines Commission

Non-Controlled Substance Modifications to the Sentencing Guidelines – 2016 Legislative Bills Passed into Law; Creating or Amending Crime Laws Presented to MSGC on June 8, 2016

The following are Legislative crime bills contained within 2016 Minnesota Session Laws. All were passed into law, or were pending executive action, as of May 31, 2016. Such new laws must be considered by the Commission for possible modifications to the Sentencing Guidelines.

A. Amended Crime Laws Affecting the Guidelines. The following existing offenses were amended by a law passed during the 2016 Legislative Session, and must be reviewed by the Commission.

Commission Action: For the offenses listed below, taking the amendments into consideration, the Commission must decide if the offense should be re-ranked, if there should be any amendments to the permissive consecutive offense list, or another other amendments to the Guidelines.

1. Damage or Theft to Energy Transmission or Telecommunications Equipment
([Chapter 152](#) – [S.F. 2649-1E](#) – PAGE 1)

Description:

Minn. Stat. § [609.593](#), subd. 1, expands the damage to energy transmissions or telecommunications equipment crime to include damage to, or removal of, any component used in the generation, transmission, or distribution of electricity, including equipment used for grounding, system protection, or personal protection.

The penalty is contained in subd. 2. The crime is a felony and the statutory maximum remains at five years.

The law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 152 ; 2015 Minn. Stat. § 609.593 .
Est. Bed Impact: Minimal.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: The offense is ranked at Severity Level 3.

According to MSGC monitoring data; in the five years from 2010 to 2014, 13 offenders have been sentenced for the existing felony offense, approximately two to three each year. Although one received a prison sentence of 17 months, all had presumptive stayed sentences. The prison sentence was the result of a request for prison by the defendant. Given the small number of offenders sentenced for this offense in the past, it is assumed that the expansion of the crime will result in only one or two additional offenders a year being sentenced for this offense and none will have presumptive prison sentences.

MSGC Staff Recommendation: Maintain the Severity Level 3 ranking in Guidelines § 5 because the statutory maximum remains the same (5 years). No modifications to the Guidelines are necessary.

2. Gambling Regulations (Raffle Boards)
([Chapter 138](#) – [H.F. 3281](#) – PAGES 2-4)

Description: Minn. Stat. § [297E.02](#) regulates the imposition of tax on all lawful gambling. Minn. Stat. § [349.2125](#) defines gambling contraband. Both statutes were amended to include raffle boards, in addition to pull-tabs, tip boards, paddle ticket cards, that are not bar coded in accordance with State regulations. The law was expanded so that contraband would include raffle boards not bar coded by amending Minn. Stat. § [349.2127](#).

Under subdivision 2, it is a felony to possess or sell more than ten pull-tabs, tip-boards or raffle boards. Under subdivision 3, it is a felony to alter pull-tabs, tip-boards or raffle boards where the total face value exceeds \$200, or knowingly submit false information or place false information on a pull-tab, tip-board or raffle board. Under subdivision 4, it is a felony to transport unstamped deals on more than ten pull-tabs, tip-boards or raffle boards. The statutory maximum is five years for any of these offenses.

Effective Date: Not indicated.	Reference: 2016 Minn. Laws ch. 138 ; 2015 Minn. Stat. § 297E.02 ; §§ 349.2125 ; 2127 .
Est. Bed Impact: Not requested.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: The offense is ranked at Severity Level 2.

MSGC Staff Recommendation: Maintain the Severity Level 2 ranking in Guidelines § 5 because the statutory maximum remains the same (5 years). No modifications to the Guidelines are necessary.

3. Assault in the Fourth Degree Against a Peace Officer Clarified
([Chapter 93](#) – [S.F. 2227-1E](#) – PAGE 5)

Description: The law clarifies that a person who intentionally throws or otherwise transfers bodily fluids or feces at a peace officer is guilty of a felony under Minn. Stat. § [609.2231](#), subd. 1, regardless of whether that person otherwise physically assaults the peace officer. The law abrogates *State v. Struzyk*, 869 N.W. 2d 280 (Minn. 2015), which interpreted the statute as requiring a separate physical-assault element, overruling *State v. Kelley*, 734 N.W. 2d 689 (Minn. App. 2007), which did not.

The statute is separated into paragraphs. Paragraph (a) defines a peace officer for purposes of the statute. Paragraph (b) indicates that whoever physically assaults a peace officer is guilty of a gross misdemeanor. Paragraph (c) describes the felony as either an act of (1) physically assaulting an officer and inflicting demonstrable bodily harm; or (2) intentionally throwing or transferring bodily fluids or feces at an officer (no physical assault required). The felony continues to have a three-year statutory maximum.

This law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 93 ; 2015 Minn. Stat. §§ 609.2231
Est. Bed Impact: None.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: Assault in the fourth degree is ranked at Severity Level 1. According to Minnesota Sentencing Guidelines Commission monitoring data, in 2014, there were 149 convictions for felony fourth-degree assaults against a peace officer. According to Minnesota Offense Codes (MOCs) collected by law enforcement and prosecuting attorneys, 83 of the 149 (56%) were a result of a person who intentionally threw or otherwise transferred bodily fluids or feces at the peace officer. Six of the 83 offenders were sentenced to an executed prison sentence. This law affects only those cases involving transfer of bodily fluids at a peace officer that did not also involve physically assaulting the peace officer. It is unknown how many cases would have fit into that narrow category.

MSGC Staff Recommendation: Maintain the Severity Level 1 ranking in Guidelines § 5 because the statutory maximum remains the same (3 years). Keep the offense on the list of offenses eligible for permissive consecutive sentences in Guidelines § 6. No modifications to the Guidelines are necessary.

4. Attempting to Hire a Minor for Prostitution
([Chapter 189](#), Art. 4, Sections 11 & 15 – [S.F. 2862-1E](#) – PAGES 8 & 10-11)

Description: This law increases penalties for attempting to hire a minor for prostitution by amending Minnesota Statutes 2015 Supplement, section 609.324, subdivision 1.

Minn. Stat. § 609.324, subd. 1(a)(3) expands the crime of engaging in prostitution with an individual under the age of 13 to include intentionally hiring or offering or agreeing to hire an individual who the actor reasonably believes to be under the age of 13 years to engage in sexual penetration or sexual contact. The statutory maximum is 20 years. Like other offenses under paragraph 1(a), violators of this new provision of the law will be required to register as predatory offenders.

Minn. Stat. § 609.324, subd. 1(b)(3) expands the crime of engaging in prostitution with an individual under the age of 16 but at least 13 to include intentionally hiring or offering or agreeing to hire an individual who the actor reasonably believes to be under the age of 16 but at least 13 years to engage in sexual penetration or sexual contact. The statutory maximum is 10 years.

Minn. Stat. § 609.324, subd. 1(c)(3) is amended to limit the offense of intentionally hiring or offering or agreeing to hire an individual who the actor reasonably believes to be under the age of 18 years to engage in sexual penetration or sexual contact to those who are believed to be at least 16 years. The statutory maximum is five years.

This bill is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 189 , Art. 4, § 15; 2015 Minn. Stat. § 609.324 .
Est. Bed Impact: Minimal.	Racial Disparity Impact: Not Estimated.

Guidelines Considerations: Prison is the recommended disposition for all of the severity level nine offenses, but both offenders sentenced for that offense received mitigated dispositional departures. Prison is the recommended disposition for the severity level five offenses with a criminal history score of 3 or more and for the severity level three offenses (the most frequently occurring offense) for offenders with a criminal history score of four or more. In the last five years, only one severity

level five offender and one severity level 3 offender has had a criminal history score high enough to trigger a presumptive prison sentence and both received a prison sentence.

Because there has been an average of only three cases a year sentenced for these prostitution offenses over the last five years, it is assumed that the expansion of the offenses will not result in a significant increase in the number of cases. Furthermore, there may not be a case with a presumptive prison sentence in every year. The offense in § 609.324, subd. 1(c)(3) was amended to include victims believed to be under the age of 18 in 2015. It may be too soon to evaluate the effect of that change, but to date, MSGC has no record of any cases being sentenced under that provision.

It is assumed that a person who presently hires a person--reasonably but incorrectly believed to be a child of a specified age--to engage in prostitution could, in most cases, be charged with an attempt to hire a child of that age to engage in prostitution. A review of sentencing data discloses no cases in which an offender was sentenced for an attempt to commit a violation of Minn. Stat. sec. 609.324, subd. 1, which suggests that the impact of the act's changes to that subdivision would be minimal.

MSGC Staff Recommendation: Maintain the existing rankings for these amended offenses. Table 1 displays the severity levels, number of cases sentenced from 2010-2014, imprisonment rates, and average sentences for the existing offenses.

Table 1.

Statute	Offense	Severity Level	# of cases-last 5 years	Prison Rate	Av. Sentence
609.324.1(a)(3)	Under 13	9	2	0 (10%)	---
609.324.1(b)(3)	13-under 16	5	3	1 (33%)	33 months
609.324.1(c)(3)	16-under 18	3	10	1 (10%)	21 months

B. New Offenses. The following new felony offenses were enacted by the Legislature during the 2016 Legislative Session and must be reviewed and acted on by the Commission.

Commission Action: One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to

the list of offenses eligible for permissive consecutive sentences. The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

For the new offense listed below, the Commission must decide:

- What severity level should be assigned?
- Are there other amendments that must be made to the Guidelines?

1. Felony Assault Motivated by Bias

([Chapter 189](#), Art. 4, Sec. 14 – [H.F. 2749-3E](#) – PAGE 10)

Description: The law creates a new felony that increases the statutory maximum penalty for felony-level assaults motivated by bias. The new law, Minn. Stat. § 609.2233, subjects a person who commits [first-](#), [second-](#), or [third-](#)degree assault because of the victim’s or another person’s actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section [363A.03](#), age, or national origin, to a statutory maximum penalty of 25 percent longer than the maximum penalty otherwise applicable.

This law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 189 , Sec. 14; H.F. 2749-3E .
Est. Bed Impact: Minimal.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: There is currently a felony offense for which bias is an element of the offense: subsequent fourth degree assault motivated by bias (§ 609.2231 subd. 4(b)). This is an assault that involves what would otherwise be a misdemeanor-level assault, but is elevated to a felony because the offender commits a subsequent assault motivated by bias within five years. According to MSGC monitoring data, since 2001, there have been two offenders sentenced for this offense, and neither received an executed prison sentence.

MSGC Staff Recommendation: Maintain the current severity levels for first-, second-, and third-degree assault; provide that the presumptive sentence durations should be increased by 25 percent; and prohibit the use of the aggravating factor involving bias motivation under Guidelines § 2.D.3.b(11), when the statutory maximum was increased, as described below.

Section 2.D. Departures from the Guidelines

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2.D.307. *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when ~~an offender has been convicted under a statute that~~ sentencing an offender for a crime with an increased statutory maximum penalty under Minn. Stat. § 609.2233 (felony assault motivated by bias), or for a crime that was 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(a)(1) (stalking)). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.* * * *

Section 2.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

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13. Felony Assault Motivated by Bias. When an offender is sentenced for a crime for which the maximum penalty has been increased under Minn. Stat. § 609.2233, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by twenty-five percent. * * *

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
1	Assaults <u>4th Degree</u> Motivated by Bias	609.2231, subd. 4(b)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.2231, subd. 4(b)	Assaults <u>4th Degree</u> Motivated by Bias	1 **

** See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

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2. Criminal Vehicular Homicide (Qualified Prior Driving Offense Conviction) ([Chapter 109](#) - [H.F. 71](#) - PAGES 12-14)

Description: Minn. Stat. §§ [609.2111](#); [2112](#), subd.1; and [2114](#), are amended by creating an enhanced penalty for criminal vehicular homicide occurring within ten years of a qualified prior driving offense. The statutory maximum for criminal vehicular homicide (CVH) under Minn. Stat. § 609.2112, subd. 1 (death), and criminal vehicular operation (CVO) under Minn. Stat. § 609.2114, subd. 1 (death to an unborn child), is increased from ten years to 15 years if a person commits an offense under clauses (2) to (6) within ten years of a qualified prior driving offense. The offenses included in clauses 2 through 6 are all “substance-related”; that is, they all involve the use of alcohol or some other chemical substance. A definition for “qualified prior driving offense” is added to Minn. Stat. § 609.2111, and includes a prior conviction for 1st Degree DWI, 2nd Degree DWI, substance-related CVH (including death to an unborn child), substance-related felony CVO (including harm to an unborn child), and past versions of these offenses.

The law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 109 ; 2015 Minn. Stat. §§ 609.2111 ; 2112 , subd.1; and 2114 ; § 169A.20 ; 24 ; 25 ; Minn. Stat. 2012, § 609.21 ; Minn. Stat. 2006, § 609.21 .
Est. Bed Impact: 5 beds.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: CVH is ranked at Severity Level 8, a severity level at which all offenders are recommended a prison sentence with presumptive durations ranging from 48 months (at a Criminal History Score of 0) to 108 months (at a Criminal History Score of 6). The Commission must decide how to rank the enhanced offense or otherwise provide for an enhanced sentence.

There are also two Guidelines policies related to criminal history calculation that may need consideration because of the enhanced CVH offense. The first relates to how criminal history is accumulated if the current offense is a CVH. Generally, there is a one-point limit for a misdemeanor/gross misdemeanor point. However, that limit is removed when the current offense is CVH (or CVO or felony DWI) and the person has DWI priors; and units assigned are increased from one unit to two units under the same circumstances. The policy reads:

- g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI): If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes. Guidelines § 2.B.3.g.

The second policy relates to "enhanced" felonies. It excludes the use of non-felony priors from the criminal history calculation when they were used to enhance the current offense to a felony. In general, the excluded priors can be used again in future non-enhanced felony cases (as outlined in Guidelines § 2.B.6.b). The general policy reads:

[Guidelines § 2.B.6.]a. Enhanced Felonies. When the current offense is a felony solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, the prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

Guidelines § 2.B.6.c contains the policy for counting non-felony DWIs when the current offense is a second felony DWI. Here, the prior non-felony DWIs used to enhance the first felony DWI cannot be used in calculating the criminal history score.

[Guidelines § 2.B.6.]c. Counting Prior Misdemeanors and Gross Misdemeanors: Felony Driving While Impaired (DWI). If the current offense is a felony DWI offense and the offender has a prior felony DWI offense, the prior felony DWI must be used in computing the criminal history score. The prior misdemeanor and gross misdemeanor offenses used to enhance the first prior felony DWI cannot be used in the offender's criminal history. Any other misdemeanor or gross misdemeanor DWI offenses may be included as provided in section 2.B.3.g.

Prison Bed Impact: It was assumed that five offenders sentenced from 2012 to 2014 would qualify for enhanced sentences under the new law. Three of those five had custody status points, one had a misd./GM point because of the two-unit rule for prior DWIs, and one had two misd./GM points because of the two-unit rule and the no-limit rule. The average criminal history score was 2 points. Four of the five offenders received executed prison sentences.

It is assumed that, in the future, one or two offenders each year would receive enhanced prison sentences at durations corresponding to those found at Severity Level 9 for their criminal history scores. The average increased time to serve for the four offenders who received prison sentences would be 30 months. In order to avoid underestimating the impact, it is assumed that two offenders a year will receive the enhanced sentences. Based on these assumptions, it is estimated that the new law will result in the need for 5 additional prison beds per year. It is estimated that one bed will be needed in FY2019, three beds in FY2020, and five beds in FY2021, and every year after.

MSGC Staff Recommendation: Staff recommends that the Commission adopt one of two alternate proposals for ranking, and outlines sections of the Guidelines affected if the Commission modified the criminal history policies. In addition, staff offers a recommendation on permissive consecutive sentencing.

1. Alternate Proposal 1: Rank the enhanced offense one severity level higher, at Severity Level 9. At Severity Level 9, the presumptive durations range from 86 months (at a Criminal History Score of 0) to 158 months (at a Criminal History Score of 6).
2. Alternate Proposal 2: Address the enhanced offense as a sentence modifier in Guidelines Section 2.G, like with crimes committed for the benefit of a gang under Minn. Stat. § [609.229](#). The statutory maximum for a crime committed for a benefit of a gang is five years longer than the statutory maximum for the underlying crime. In response, the Guidelines presumptive sentence is 12 months longer than the underlying crime. Or six months longer if the offense was an attempt or conspiracy.

The alternate “ranking” proposals are outlined below for the Commission’s consideration.

(Alternate Proposal 1: Rank Enhanced Criminal Vehicular Homicide)

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
9	<u>Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)</u>	<u>609.2112, subd. 1(b)</u>
	<u>Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)</u>	<u>609.2114, subd. 1(b)</u>
8	Criminal Vehicular Homicide (Death)	609.2112, subd. 1(a)
	Criminal Vehicular Operation (Death to an Unborn Child)	609.2114, subd. 1(a)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.2112, subd. 1(a)	Criminal Vehicular Homicide (Death)	8
609.2112, subd. 1(b)	<u>Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)</u>	<u>9</u>
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)	5
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)	3
609.2114, subd. 1(a)	Criminal Vehicular Operation (Death to an Unborn Child)	8
<u>609.2114, subd. 1(b)</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)</u>	<u>9</u>
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)	5

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(Alternate Proposal 2: Sentence Modifier)

Section 2.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

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12. Criminal Vehicular Homicide (Death or Death to an Unborn Child, Qualified Prior Conviction). When an offender is sentenced for a criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(b) (death, qualified prior conviction), or 609.2114,

subd. 1(b) (death to an unborn child, qualified prior conviction), the presumptive duration found in the appropriate cell on the Standard Grid for the offense must be increased by 12 months. * * *

3. Criminal History Policy Considerations/Affected Guidelines Language: Per Guidelines § 2.C.3.d, the presumptive disposition for a felony DWI offense is always commitment if the offender had a previous conviction for a felony DWI or for a criminal vehicular homicide or operation offense listed in [Minn. Stat. § 169A.24](#), subd. 1(3). Guidelines Appendix 1 contains a table restating this policy, and other similar policies, in a convenient format. Although the list in Minn. Stat. § 169A.24, subd. 1(3), includes [Minn. Stat. § 609.2114](#) (criminal vehicular operation involving death or injury to an unborn child), that offense has been omitted from the list in Appendix 1. Staff recommends that Appendix 1 be updated to rectify this oversight, as shown below.

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

- Presumptive disposition. Commitment.
- Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.
- Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See section 2.G for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

Statute	Offense	Prerequisite or Conditions	Minimum Duration
169A.24, subd. 1(2)	Driving while Intoxicated	Prior Felony DWI	Grid Time
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(2) thru (6); § 609.2113.1(2) thru (6);	Grid Time

Statute	Offense	Prerequisite or Conditions	Minimum Duration
		§ 609.2113.2(2) thru (6); § 609.2114.1(2) thru (6); § 609.2114.2(2) thru (6).	

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3. Interfering with a Body or Scene of Death (Laura's Law) ([Chapter 175](#) - [H.F. 3469-3E](#) - PAGE 15)

Description: This law modifies interfering with a body or scene of death under Minn. Stat. § [609.502](#), subd. 1, by elevating the crime from a gross misdemeanor to a felony if done with intent to conceal the body. A new subdivision 1a establishes the maximum penalty at 3 years in prison, a \$5,000 fine, or both.

This law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 175 ; H.F. 3469-3E ; 2015 Minn. Stat. §§ 609.502 ; 495 .
Est. Bed Impact: 3 beds.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: This new offense most closely resembles aiding an offender-obstructing an investigation under Minn. Stat. § [609.495](#), subd. 3. That offense can have a variable statutory maximum because it is based on one-half of the statutory maximum for the underlying offense. That offense is unranked, which means that the Court must assign a severity level before sentencing.

During the last five years, 118 offenders have been sentenced for aiding an offender-obstructing an investigation and 33 percent have received prison sentences. The severity-level rankings have ranged from Severity Level 1 to Severity Level 9.

MSGC Staff Recommendation: Because this new felony, like aiding an offender, could involve the obstruction of an investigation in a wide variety of situations and is expected to occur infrequently, place this offense on the unranked offense list, as described below. If the Commission chooses to rank this offense, staff recommends that the offense be ranked no higher than Severity Level 4, as many presumptive sentences would, at higher severity levels, exceed the statutory maximum.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Interference with a Dead Body or Scene of Death</u>	609.502 subd. 1(1)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.502 subd. 1(1)	<u>Interference with a Dead Body or Scene of Death</u>	UNRANKED

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4. Use of Automated Sales Suppression Device ([Chapter 188](#), Art. 11, Sec. 6, 9 & 10 – [H.F. 848-4E](#) – PAGES 17-19)

Description: A felony is established under new Minn. Stat. § 609.858 that prohibits the sale, purchase, installation, transfer, possession, development, manufacture, access, or use of an automated sales suppression device, zapper, phantom-ware, or similar device knowing that the device or phantom-ware is capable of being used to commit tax fraud or suppress sales. Subdivision 2 establishes the maximum penalty at five years in prison, a \$10,000 fine, or both.

The purported effective date is August 1, 2015; the bill was presented to the Governor May 24, 2016.

Effective Date: August 1, 2015. Presented to the Governor May 24, 2016	Reference: 2016 Minn. Laws ch. 188 , Art. 11, Sec. 10.
Est. Bed Impact: Minimal.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: Tax evasion under Minn. Stat. § 289A.63 is a felony with a five year statutory maximum for knowingly and willfully evading taxes. It is ranked at Severity Level 3. Other analogous offenses also ranked at Severity Level 3 are possession of burglary tools, possession of code grabbing devices, and possessing of shoplifting gear.

When the bill was introduced during the 2015 Legislative Session, MSGC prepared a fiscal note. According to the most recent MSGC monitoring data at that time, from 2009 to 2013, 79 offenders were sentenced for violations of Minn. Stat. § 289A.63 (16 a year) and three (4%) received a prison sentence. Since Minn. Stat. § 289A.63 covers evasion of multiple types of taxes (income, property, estate, general sales, minerals and mining) it is assumed that convictions for this new felony will be less frequent and prison sentences will be rare.

MSGC Staff Recommendation: Rank use of automated sales suppression devices under Minn. Stat. § 609.858 at Severity Level 3, and do not add it to the list of offenses eligible for consecutive sentences because tax evasion under Minn. Stat. § 289A.63, its most comparable offense, is not on the list. The staff recommendations are outlined below.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
<u>3</u>	<u>Use of Automated Sales Suppression Devices</u>	<u>609.858</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.858</u>	<u>Use of Automated Sales Suppression Devices</u>	<u>3¹</u>

¹ Effective for crimes committed after May 25, 2016.

**5. Nonconsensual Dissemination of Images
([Chapter 126](#) – [S.F. 2713-2E](#) – PAGES 20-27)**

Description: The law creates a civil cause of action for the nonconsensual dissemination of private sexual images and nonconsensual sexual solicitation under the newly enacted Minn. Stat. § 604.31; adds a threat to commit nonconsensual dissemination of private sexual images to Minn. Stat. § [609.27](#) (coercion) and

§ [609.275](#) (attempt to coerce); creates a new crime for nonconsensual dissemination of private sexual images under the newly enacted Minn. Stat. § 617.261; amends the crimes of harassment and stalking to include nonconsensual sexual solicitation under Minn. Stat. §§ [609.748](#) and [749](#); clarifies the justification of criminal defamation striking clause (1) (the defamatory matter is true and is communication with good motives and for justifiable ends) under Minn. Stat. § [609.765](#) (criminal defamation); and expands the definition of qualified domestic violence-related offense to include nonconsensual dissemination of private sexual images under Minn. Stat. § [609.02](#), subd. 16.

The new offense created under Minn. Stat. § 617.261, subd. 2(a) prohibiting nonconsensual dissemination of private sexual images is a gross misdemeanor. The offense becomes a felony with a three-year statutory maximum under subd. 2(b) if an aggravating factor is present. The aggravating factors are: 1) the person depicted in the image suffers financial loss due to dissemination of the image; 2) the actor disseminates the image with intent to profit from dissemination; 3) the actor maintains an Internet Web site, online service, online application, or mobile application for the purpose of disseminating the image; 4) the actor posts the image on a Web site; 5) the actor disseminates the image with intent to harass the person depicted in the image; 6) the actor obtained the image by committing a violation of section 609.52 (theft), 609.746 (interference with privacy), 609.89 (computer theft), or 609.891 (unauthorized computer access); or 7) the actor has previously been convicted under this chapter.

Gross misdemeanor stalking crimes under 609.749, subdivision 2 are expanded to include in a new clause (8), the use of another’s personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

This law is effective August 1, 2016, and applies to crimes committed on or after that date.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 126 ; 2015 Minn. Stat. §§ 609.27 , 275 , 748 , 749 ; Minn. Stat. § 617.261 .
Est. Bed Impact: 3 beds.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: Felony coercion under Minn. Stat. § 609.27, is ranked at Severity Level 3, when there is a threat of bodily harm under subdivision 1(1) or when the financial gain or loss is \$2,500, or more. It is ranked at Severity Level 2, when the financial gain or loss is more than \$300 but less than \$2,500. The statutory maximum are based on financial gain or loss: ten years if the pecuniary gain or loss is \$2,500, or more; and five years if the pecuniary gain or loss is more than \$300 but less than \$2,500.

Felony stalking under Minn. Stat. § 609.748 is based on aggravated violations, subsequent violations, or a pattern of stalking conduct. The statutory maximums are either five years or 10 years, as displayed in the table, below.

Severity Level	Stat. Max. Years	Statute Number	Offense
4	5	609.748 subd. 6(d)	Violation of Restraining Order
4	5	609.749 subd. 3(a) 609.749 subd. 3(a)(1) 609.749 subd. 3(a)(2) 609.749 subd. 3(a)(3) 609.749 subd. 3(a)(4) 609.749 subd. 3(a)(5)	Stalking (Aggravated Violations) Aggravated-Bias Crime Aggravated-False Impersonating Another Aggravated-Dangerous Weapon Agg.-Tamper w/Juror/Proceeding or Retaliate Agg.-Victim under 18 and Actor 36 mos. older
4	10	609.749 subd. 3(b)	Stalking (agg. violations) –Victim under 18, committed with sexual or aggressive intent
4	5	609.749 subd. 4(a)	Stalking (Subsequent Violations)
5	10	609.749 subd. 4(b)	Stalking (3rd or Subsequent violations)
5	10	609.749 subd. 5	Stalking (Pattern of Conduct)

Felony stalking is on the list of offenses eligible for a permissive consecutive sentence in Section 6, but coercion is not. For offenses on the list, it is permissive to sentence consecutively when the presumptive disposition is commitment.

MSGC Staff Recommendations:

1. Maintain the severity-level rankings for coercion under Minn. Stat. § 609.27, provided that the Commission agrees that the addition of a threat to commit nonconsensual dissemination of private sexual images does not substantially change the rankings. The recommended modifications follow.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
3	Coercion (Threat Bodily Harm)	609.27, subd. 1(1)

Severity Level	Offense Title	Statute Number
	Coercion (<u>Prop. Value \$2,500 or More</u>)	609.27, subd. 1(2),(3), (4), & (5), & (6)
2	Coercion (<u>Prop. Value \$301 - \$2,499</u> 500)	609.27, subd. 1(2),(3), (4), & (5), & (6)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.27, subd. 1(1)	Coercion (Threat Bodily Harm)	3
609.27, subd. 1(2),(3), (4), & (5), & (6)	Coercion (<u>Prop. Value over \$2,500 or More</u>)	3
609.27, subd. 1(2),(3), (4), & (5), & (6)	Coercion (Prop. Value \$301 - \$2,500)	2

* * *

- Rank felony nonconsensual dissemination of private sexual images at Severity Level 3 (with coercion-threat of bodily harm or property value of \$2,500 or more) or at Severity Level 4 (with the majority of stalking offenses). Possible modifications follow (shown at Severity Level 3).

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
<u>3</u>	<u>Nonconsensual Dissemination of Private Sexual Images</u>	<u>617.261, subd. 2(b)</u>

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>617.261, subd. 2(b)</u>	<u>Nonconsensual Dissemination of Private Sexual Images</u>	<u>3</u>

* * *

3. Staff recommends adding nonconsensual dissemination of private sexual images to the permissive consecutive sentencing list in the manner outlined below.

Section 6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B.** Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
<u>617.261, subd. 2(b)</u>	<u>Nonconsensual Dissemination of Private Sexual Images</u>

* * *

- C. Amended Crime Laws Not Affecting the Guidelines.** Although these laws were amended by the 2016 Legislature, the crimes themselves were not amended. No action is necessary on the part of the Commission. Staff brings these changes forward for the Commission's information.

Statute of Limitations Increased for Certain Identity Theft ([Chapter 121](#) - [H.F. 3482-2E](#) - PAGE 28)

Description: This law amends Minn. Stat. § [628.26](#), clause (h) (list of offenses for which the statute of limitations is extended from three to five years) by adding a violation of Minn. Stat. § [609.527](#), subd. 3(5) (identity theft where the offense involves eight or more direct victims or the total combined loss to the direct or

indirect victims is more than \$35,000). . Offenses currently listed in clause (h) are Minn. Stat. §§ 609.2335 (financial exploitation of vulnerable adult), 609.52, subdivision 2, clause (3), items (i) and (ii), (4), (15), or (16) (theft), 609.631 (check forgery), or 609.821 (financial transaction card fraud), where the value of the property or services stolen is more than \$35,000.

This law is effective August 1, 2016, and applies to crimes committed on or after that date and to crimes committed before that date if the limitations period for the crime did not expire before August 1, 2016.

Prison Bed Impact: If three additional offenders a year receive prison sentences of 75 months for identity theft as a result of the provisions, the projected prison bed impact is 12 beds a year. Allowing time for implementation, it is projected that two prison beds will be needed in FY2017, five prison beds will be needed in FY2018, nine prison beds will be needed in FY2019, and 12 prison beds will be needed in FY2020, and each year after.

Effective Date: August 1, 2016.	Reference: 2016 Minn. Laws ch. 121 ; 2015 Minn. Stat. § 628.26 ; § 609.527 .
Est. Bed Impact: 12 beds a year.	Racial Disparity Impact: Prepared; no impact on racial disparity anticipated.

Commission Action: No action is necessary or recommended.