

Minnesota Sentencing Guidelines Commission

Proposed Modifications to the Sentencing Guidelines and Commentary Effective Date: August 1, 2017

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, July 20, 2017, at 2:00 p.m. in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155. The public hearing is being held to consider proposed modifications, and a severity-level ranking resulting in no modifications, to the Minnesota Sentencing Guidelines and Commentary resulting from legislative amendments and technical corrections.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission's office at the above address or telephone number, or by e-mail at sentencing.guidelines@state.mn.us. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request.

The Commission will hold the record open for five calendar days after the public hearing to accept written comment. On Thursday, July 27, 2017, the Commission will meet at 2:00 p.m. in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155, to formally adopt or reject the proposed modifications. If adopted, amendments become effective August 1, 2017, unless the Legislature by law provides otherwise.

A. New and Amended Crime Laws Affecting the Guidelines. The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and proposes to modify Minnesota Sentencing Guidelines §§ 5.A and 5.B and Appendix 3; and to assign a severity level of 3 to Use of Automated Sales Suppression Devices, which is codified within the existing offense of Tax Evasion Laws, therefore making no modifications to §§ 5.A and 5.B as a consequence.

1. Modification to Guidelines §§ 5.A and 5.B resulting from amended damage to property under Minn. Stat § 609.595, subd. 1.

The Commission proposes to assign to the offense of Damage to Property (Public Safety Motor Vehicle) a severity level of 3, and to make technical changes to accommodate the renumbering of the clauses of Minn. Stat § 609.595, subd. 1, as follows.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
3	Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)	609.595, subd. 1(1) <u>& (2)</u>

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Severity Level	Offense Title	Statute Number
2	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	609.595, subd. 1(2), (3), & (4), <u>& (5)</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.595 subd.1(1) <u>& (2)</u>	Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)	3
609.595 subd. 1(2)(3)(4), <u>& (5)</u>	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	2

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- Assign a severity level of 3 to use of automated sales suppression devices under Minn. Stat. § 289A.63, subd. 12, resulting in no modification to Guidelines §§ 5.A and 5.B.

The Commission proposes to assign Use of Automated Sales Suppression Devices a severity level of 3. Because the offense is codified within the existing offense of Tax Evasion Laws, the Commission therefore proposes to make no modifications to §§ 5.A and 5.B as a consequence, as follows.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
3	Tax Evasion Laws	289A.63

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
289A.63	Tax Evasion Laws	3

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3. Modifications to Guidelines § 5.A and 5.B and Appendix 3 resulting from the new impersonating a peace officer under Minn. Stat. § 609.4751.

The Commission proposes to assign Impersonating a Peace Officer a severity level of 2, and to add the offense of Impersonating a Peace Officer to Appendix 3 (Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table), as follows.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
<u>2</u>	<u>Impersonating a Peace Officer</u>	<u>609.4751, subd. 3</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.4751, subd. 3</u>	<u>Impersonating a Peace Officer</u>	<u>2</u>

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Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

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Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.4751, subd. 3</u>	<u>Impersonating a Peace Officer</u>	<u>2</u>	<u>24</u>	<u>CHS 6 (upper-range)</u>

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B. Technical Amendments to Crime Laws Affecting the Guidelines. The Commission reviewed laws related to new and amended crime laws in the 2017 Regular Session and 1st Special Session, and proposes to modify Minnesota Sentencing Guidelines §§ 5.A, 5.B, and 7, as a result of a technical amendments to the headnote and text of Minn. Stat. § 268.182, changing it from “APPLICANT’S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY” to “FRAUD; CRIMINAL PENALTY,” as follows.

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
3	<u>False Representations Unemployment Benefit Fraud (Over \$5,000)</u>	268.182

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Severity Level	Offense Title	Statute Number
2	<u>False Representations Unemployment Benefit Fraud (\$5,000 or Less)</u>	268.182

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
268.182	<u>False Representations Unemployment Benefit Fraud (Over \$5,000)</u>	3
268.182	<u>False Representations Unemployment Benefit Fraud (\$5,000 or Less)</u>	2

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Section 7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

Statute Number	Offense Title
176.178	Workers Compensation Fraud
256.98	Wrongfully Obtaining Assistance

Statute Number	Offense Title
268.182	False Representations <u>Unemployment Benefit Fraud</u>

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C. Technical Corrections. The Commission reviewed technical errors, and proposes to modify Minnesota Sentencing Guidelines Comment 2.D.106; and the Guidelines Cover Page.

1. Modification to Guidelines Comment 2.D.106, to strike an obsolete cross-reference.

The Commission proposes to strike the reference to the obsolete cross-reference to Comment 2.C.10 in Comment 2.D.106, as follows.

Section 2.D. Departures from the Guidelines

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Comment * * *

2.D.106. *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and ~~Comment 2.C.10~~). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.* * * *

2. Modification to Guidelines Cover Page to strike the word "annual."

The Commission proposes to strike the word "annual" from the notation on the Guidelines cover page to clarify that the Guidelines are in effect until the next publication, which may or may not be annual, as follows.

Minnesota
Sentencing
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Commentary

August 1

2017

These Sentencing Guidelines are effective August 1, ~~2016~~ 2017, and determine the presumptive sentence for felony offenses committed on or after the effective date. The Guidelines remain in effect until the next ~~annual~~ publication.