

WEIGHTING PRIOR DRUG OFFENSES – 11/18/16 MSGC TRAINING UPDATE

On November 17, 2016, the Minnesota Sentencing Guidelines Commission decided that, in calculating a Defendant's criminal History score, prior drug convictions are *not* to be recalculated using post-August 1, 2016 drug threshold weights. The rationale was that Guidelines Comment 2.B.106 applies only to added or removed elements of the offense and does *not* apply to modifications of an element. Because the changes to the controlled substance laws modified an element, recalculation is not necessary.

Previous training guidance issued by MSGC staff to the contrary is not correct.

Specifically, the Commission changed Comment 2.B.106. It now reads as follows:

2.B.106. If the prior offense has been removed from the current Severity Offense Reference Table in response to a legislative action that repealed the prior offense and created separate offenses with new or removed elements, use the current severity level for the newly created offense that has been added to Severity Offense Reference Table and encompasses the behavior necessarily proven by the prior conviction. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

An update of the Minnesota Sentencing Guidelines and Commentary that includes this change to Comment 2.B.106 is now available on the MSGC web site.