

Staff Issue Paper

Revised Severe Violent Crimes

Refined Proposals on Repeat Violent Offenders

Presented July 26, 2018

Proposal: Increase CHS for Repeat Severe Violent Offenders

Increase the weights assigned in the criminal history score (CHS) to offenses defined as severe violent crimes if the current offense is a severe violent crime (SVC). Each prior severe violent crime would receive a weight of 3 points, instead of the 1.5, or 2 points it currently receives. Table 1 displays the offenses designated as severe violent crimes, their current statutory maximums, severity level rankings, and whether they are included in the definition of violent crime in Minn. Stat. § [609.1095](#).

Table 1. Proposed Severe Violent Crimes (Rev. June 2018)

Statute	Offense Description	Statutory Maximum	Severity Level	Attempts	Included in 609.1095
609.185	Murder 1	Life/20 yrs.	Off-Grid	Yes	Yes
609.2661	Murder 1 – Unborn Child	Life/20 yrs.	Off-Grid	Yes	Yes
609.19, subd. 1	Murder 2 – Intentional/drive-by shooting	40 years	11	Yes	Yes
609.19, subd. 2	Murder 2 - Unintentional	40 years	10	Yes	Yes
609.2662	Murder 2 – Unborn Child	40 years	10 or 11	Yes	Yes
609.195(a)	Murder 3 – eminently dangerous act and evincing depraved mind	25 years	10	No	Yes
609.2663	Murder 3 – Unborn Child	25 years	10	No	Yes
609.221	Assault 1 – great bodily harm/peace officer	20 years	9	No	Yes
609.222, subd. 2	Assault 2 – dangerous weapon and substantial bodily harm	10 years	6	No	Yes

Statute	Offense Description	Statutory Maximum	Severity Level	Attempts	Included in 609.1095
609.245, subd. 1	Aggravated Robbery 1 st Degree – weapon/fake weapon/bodily harm	20 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping – unsafe release	40 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping – unsafe release/under 16	40 years	8	No	Yes
609.25, subd. 2(2)	Kidnapping – great bodily harm	40 years	9	No	Yes
609.282	Labor Trafficking	20/15 yrs.	Unranked	No	Yes
609.342, subd. 1(c), (d), (e), (f)	First-Degree Criminal Sexual Conduct (force, weapon, injury, accomplice)	30 years	A	No	Yes
609.343, subd. 1(c), (d), (e), (f)	Second-Degree Criminal Sexual Conduct (force, weapon, injury, accomplice)	25 years	B	No	Yes
609.498, subd. 1b	Aggravated First-Degree Witness Tampering	20 years	9	No	Yes
609.561, subd. 1, 2	First-Degree Arson	20 years	8	No	Yes
609.66, subd. 1e(b)	Drive-By Shooting – at person, occupied building/motor vehicle	10 years	8	No	Yes

A. Number of Severe Violent Crimes with a Severe Violent Prior Offense

In 2016, 443 offenders were sentenced for one of the severe violent crimes and 85 (19%) had a prior severe violent crime. Table 2 displays the number of offenders sentenced for a SVC in 2016 as well as the number that had a severe violent offense in their criminal history. Three columns are displayed for the priors: “Non-True” (multiple current SVCs or prior SVCs sentenced after they commit the current offense); “True” (sentenced on the prior SVC before they commit the offense being sentenced); and “Any” (either type of prior). Offenders may have both types of priors so the any column is not the sum of the other columns.

Table 2. 2016 Severe Violent Crimes with a Prior Severe Violent Crime

Statute	Offense Description	2016 Cases			
		Number SVC	With Prior SVC		
			Non-True	True	Any
609.185	Murder 1	4	0	0	0
609.19, subd. 1	Murder 2 – Intentional (Severity 11)	48	8	5	12
609.19, subd. 2	Murder 2 – Unintentional (Severity 10)	19	2	2	2
609.195(a)	Murder 3 (Severity 10)	2	0	0	0
609.221	Assault 1 – great bodily harm/peace officer	62	6	4	9
609.222, subd. 2	Assault 2 – dangerous weapon and substantial bodily harm	31	0	3	3
609.245, subd. 1	Aggravated Robbery	209	30	26	51

Statute	Offense Description	2016 Cases			
		Number SVC	With Prior SVC		
			Non-True	True	Any
609.25, subd. 2(2)	Kidnapping – unsafe release/under 16/GBH	7	2	0	2
609.342	First-Degree Criminal Sexual Conduct	22	1	3	4
609.343	Second-Degree Criminal Sexual Conduct	7	0	0	0
609.498, subd. 1b	Agg. First-Degree Witness Tampering	3	0	0	0
609.561, subd. 1, 2	First-Degree Arson	13	0	0	0
609.66, subd. 1e(b)	Drive-By Shooting – person, occupied entity	16	0	2	2
Total		443	49	45	85

B. Number of Severe Violent Offenders Whose Presumptive Sentence Would Not Increase Due to Their Existing Criminal History Score

Increasing the weights assigned to prior severe violent crimes would result in longer presumptive sentences only if the offender’s CHS is less than 6. If an offender already has a CHS of 6 or more, the increase in the weights assigned to prior severe violent crimes would not result in an increase to the presumptive duration. Some of these offenders have a CHS of 6 or more because they were sentenced for multiple current severe violent crimes. Overall, 27 percent of the 85 offenders with a prior severe violent crime had a CHS of 6 or more, and thus, increasing the weights assigned to the priors would not result in an increase to their presumptive sentences.

C. Current Sentencing Practices for Severe Violent Crimes with a Prior Severe Violent Crime

All of the 85 offenders sentenced for a severe violent crime in 2016 who had a prior severe violent offense had a presumptive prison disposition. The overall mitigated dispositional departure rate was 13 percent (received probation instead of prison). Table 3 displays the prison rates for those offenses as well as the durational departure rates for those offenders who received a prison sentence. Seventeen (18%) received a mitigated durational departure and 4 (4%) received an aggravated durational departure.

Table 3. Sentencing Practices for 2016 Severe Violent Offenders with a Prior Severe Violent Crime

Statute	Offense Description	2016 Cases			
		Number w/ Prior SVC	Received Prison	Mitigated Durational Departure	Aggravated Durational Departure
609.19, subd. 1	Murder 2 – Intentional (Severity 11)	12	11 (92%)	0%	0%
609.19, subd. 2	Murder 2 – Unintentional (Severity 10)	2	2 (100%)	1 (50%)	0%

Statute	Offense Description	2016 Cases			
		Number w/ Prior SVC	Received Prison	Mitigated Durational Departure	Aggravated Durational Departure
609.221	Assault 1 – great bodily harm/peace officer	9	8 (89%)	0%	0%
609.222, subd. 2	Assault 2 – dangerous weapon and SBH	3	3 (100%)	0%	0%
609.245, subd. 1	Aggravated Robbery	51	41 (80%)	11 (27%)	2 (5%)
609.25, subd. 2(2)	Kidnapping – unsafe release/under 16/GBH	2	2 (100%)	0%	0%
609.342	First-Degree Criminal Sexual Conduct	4	4 (100%)	0%	0%
609.66, subd. 1e(b)	Drive-By Shooting – person, occupied entity	2	2 (100%)	1 (50%)	0%
Total		85	73 (86%)	13 (17%)	2 (3%)

D. Prison Bed Impact of Proposal for Repeat Severe Violent Offenders

Of the 85 offenders sentenced for a severe violent crime in 2016 who had a prior severe violent offense, 73 received a prison sentence. Of the 73 offenders with prison sentences, 47 (64%) would serve a longer sentence under the proposed change to CHS calculations. Table 4 displays the number of offenders whose sentence would change and the projected prison bed impact. Also displayed is the average increase in sentence in months. The total estimated impact is an eventual 52 beds over time with an average sentence increase of almost 20 months. For twenty-six offenders, application of the proposed increase in weights for prior offenses would not result in a longer prison sentence (10 because they received consecutive sentences and 16 with a CHS of 6 or more).

Table 4. Projected Prison Bed Impact of Proposal

Statute	Offense Description	2016 Cases				
		Number w/ Prior SVC	No Changes to Prison Sentence	Serve More Time	Prison Beds	Average Sentence Increase (months)
609.19, subd. 1	Murder 2 – Intentional (Severity 11)	11	5 (46%)	6 (55%)	8	24
609.19, subd. 2	Murder 2 – Unintentional (Severity 10)	2	1 (50%)	1 (50%)	1.5	30
609.221	Assault 1 – great bodily harm/peace officer	8	4 (50%)	4 (50%)	3.5	16
609.222, subd. 2	Assault 2 – dangerous weapon and SBH	3	0 (0%)	3 (100%)	1.3	8

Statute	Offense Description	2016 Cases				
		Number w/ Prior SVC	No Changes to Prison Sentence	Serve More Time	Prison Beds	Average Sentence Increase (months)
609.245, subd. 1	Aggravated Robbery	41	12 (29%)	29 (71%)	32	20
609.25, subd. 2(2)	Kidnapping – unsafe release/under 16/GBH	2	1 (50%)	1 (50%)	1.4	24
609.342	First-Degree Criminal Sexual Conduct	4	2 (50%)	2 (50%)	3	28.5
609.66, subd. 1e(b)	Drive-By Shooting – person, occupied entity	2	1 (50%)	1 (50%)	0.5	12
Total		73	26 (36%)	47 (64%)	52	19.8

Table 5 displays the demographic distribution of the projected prison bed impact. The projected bed increase for offenders who would qualify for increased sentences is compared to the prison beds required under the current criminal history policy.

Table 5. Demographic Distribution of Projected Prison Bed Impact of Proposal

		Number of Offenders	Prison Bed Impact			
			Prison Beds Current Policy		Projected Bed Increase	
			Number	Percent	Number	Percent
	Male	72	601	99%	52	100%
	Female	1	10	1%	0	0%
Race & Ethnicity	White	14	128	21%	11	22%
	Black	49	394	65%	38	72%
	American Indian	5	62	10%	1	2%
	Hispanic	5	26	4%	2	4%
	Asian	0	0	0%	0	0%
Judicial District	First	2	19	3%	0.5	1%
	Second	7	68	11%	7	13%
	Third	4	40	7%	3	6%
	Fourth	36	225	37%	32	62%
	Fifth	3	30	5%	2	4%
	Sixth	1	20	3%	0	0%
	Seventh	5	50	8%	0.5	1%
	Eighth	1	3	1%	1	2%
	Ninth	5	47	8%	3	6%
	Tenth	9	108	18%	2.5	4%
	Total	73	611	100%	52	100%

Notes on Estimating Impact: In applying the policy, the following rules were employed: the offender was assigned a new sentence at the higher CHS that reflected the sentence received. (If an offender received the high end of the range or low end of the range, he or she was assigned the top or bottom of the range at the higher CHS; for sentences within the range, an offender was assigned a new sentence that was same number of months away from the top or bottom of the range; if the sentence was a durational departure, the offender was assigned a new sentence with the same number of months above or below the range.) If an offender received a consecutive sentence, the sentence was not changed.