

Staff Issue Paper

Vetoed Child Pornography Review Directive

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On May 19-20, 2018, the 90th Minnesota Legislature passed [Senate File 3656](#), a global supplemental budget bill. Included among the bill's various policy provisions were several changes to criminal laws. On May 23, Governor Dayton [vetoed](#) the bill. As a result, the bill's changes did not take effect.

One criminal-policy section of the bill would *not* have changed the criminal statutes. Instead, article 31, section 17, would have directed the Commission to conduct a comprehensive review of, and to consider modifying, the way the Guidelines address the crimes of Child Pornography and Use of Minors in a Sexual Performance. The entire text of that section follows:

Sec. 17. **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 and 617.247, as compared to similar crimes, including other sex offenses and other offenses with similar maximum penalties.*

Because this directive was vetoed, it is not binding. Nevertheless, two observations may be made:

- If the Commission wishes to review and consider modifying the Guidelines as they relate to child pornography, it may do so. Its charter statute directs the Commission to “meet as necessary for the purpose of modifying and improving the guidelines.” Minn. Stat. § [244.09](#), subd. 11.
- If the Commission were to undertake a policy review based only on a legislative request—without the force of law—such action would have precedent. On at least one occasion, the Commission undertook a policy review at the request of a single legislative committee. See MSGC’s [January 1983 Report to the Legislature](#), pp. 24-28.

*S.F. 3656, 3rd Engrossment, 90th Minn. Legislature, art. 31, § 17.