

COMPARISON OF COMMISSIONER SCHNELL’S PROPOSAL AND HOUSE FILE 2792

The differences between the Commissioner Schnell’s Proposal and the House Legislation are:

1. Time period of the possible extension for failure to pay restitution
 - a. Commissioner Schnell’s proposal = one year plus the possibility of an additional one year
 - b. Legislation = three years plus the possibility of an additional two years
2. Time period of the possible extension for failure to complete court ordered treatment
 - a. Commissioner Schnell’s proposal = three years
 - b. Legislation = three years plus the possibility of an additional two years
3. Under the Commissioner Schnell’s proposal, defendants convicted of certain gross misdemeanors could be on probation for six years, a year longer than felony probation – whereas the Legislation addresses this.
4. There is no provision in Commissioner Schnell’s proposal to allow for extension of probation for those convicted of a violent crime and remain a threat to public service – whereas the Legislation provides for three years plus the possibility of an additional two years
5. Commissioner Schnell’s proposal is silent on the possibility of early discharge – whereas the Legislation explicitly addresses this

PROPOSAL	HOUSE FILE 2792
<p>Durations of Stayed Sentences. When the court stays execution or imposition of sentence for a felony offense, the length of the stay must not exceed five years or the statutory maximum term of probation, whichever is less.</p>	<p>Stay of sentence maximum periods.(a) If the conviction is for a felony other than an offense listed in paragraph (b), the stay shall be for not more than five years. -SAME-</p>
<p>This limitation on the length of probation does not apply to convictions for felony homicide or sex offenses in violation of Minn. Stat. §§ 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.2662 (second-degree murder of an unborn child), 609.2663 (third-degree murder of an unborn child), 609.2664 (first-degree manslaughter of an unborn child), 609.268 (injury or death of an unborn child during the commission of a crime), 609.342 (first-degree criminal sexual conduct), 609.343 (second-degree criminal sexual conduct), 609.344 (third-degree criminal sexual conduct), 609.345 (fourth-degree criminal sexual conduct), or 609.3451 (fifth-degree criminal sexual conduct).</p>	<p>(b) If the conviction is for a felony violation of section 609.19, 609.195, 609.20, 609.2662, 609.2663, 609.2664, 609.268, 609.342, 609.343, 609.344, 609.345, or 609.3451, the stay shall be for the maximum time period for which the sentence of imprisonment might have been imposed by the court. -SAME-</p>

<p>NOTE: THIS IS NOT ADDRESSED IN THE PROPOSAL AS THE MSGC DOES NOT HAVE GUIDELINES FOR GROSS MISDEMEANORS. WITHOUT A STATUTORY CHANGE, THERE WILL BE DEFENDANTS CONVICTED OF CERTAIN GROSS MISDEMEANORS WHO WILL HAVE A LONGER LENGTH OF PROBATION THAN FELONY DEFENDANTS.</p>	<p>(c) If the conviction is for a gross misdemeanor violation of section 169A.20, the stay shall be for not more than five years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.</p>
<p>Extensions of probation are governed by statute (see Minn. Stat § 609.135, subd. 2(g)–(h)).</p>	
<p>§ 609.135, subd. 2 (g): Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:</p> <p>(1) the defendant has not paid court-ordered restitution in accordance with the payment schedule or structure; and</p> <p>(2) the defendant is likely to not pay the restitution the defendant owes before the term of probation expires.</p> <p>This one-year extension of probation for failure to pay restitution may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution that the defendant owes. Nothing in this subdivision limits the court's ability to refer the case to collections under section 609.104.</p>	<p>(h) If the defendant has received a stayed sentence for a conviction of a felony offense and as a condition of probation was ordered by the court to pay restitution, the probation officer, or the court if the defendant is on unsupervised probation, shall notify the prosecuting authority six months prior to the expiration or early discharge of a stayed sentence, the amount of any unpaid court-ordered restitution. Notwithstanding the maximum periods specified for stays of sentences under paragraph (a) or (b), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1a, that:</p> <p>(1) the defendant has not paid court-ordered restitution in accordance with the payment schedule or structure; and</p> <p>(2) the defendant is likely to not pay the restitution the defendant owes before the term of probation expires.</p> <p>The extension of probation for failure to pay restitution may be extended by the court for up to two additional years if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution that the defendant owes. Nothing in this subdivision limits the court's ability to refer the case to collections under section 609.104.</p>
<p>(§ 609.135, subd. 2 h): Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to (f), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:</p> <p>(1) the defendant has failed to complete court-ordered treatment successfully; and</p> <p>(2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.</p>	<p>(i) If the defendant has received a stayed sentence for a conviction of a felony offense and as a condition of probation was ordered to successfully complete treatment, the probation officer, or the court if the defendant is on unsupervised probation, shall notify the prosecuting authority six months prior to the expiration or early discharge of a stayed sentence as to whether the defendant has successfully completed court-ordered treatment. Notwithstanding the maximum periods specified for</p>

	<p>stays of sentences under paragraph (a) or (b), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:</p> <ol style="list-style-type: none">(1) the defendant has failed to complete court-ordered treatment successfully; and(2) the defendant is likely not to complete court-ordered treatment before the term of probation expires. <p>The extension of probation for failure to successfully complete court-ordered treatment may be extended by the court for up to an additional two years if the court finds, at another hearing conducted under subdivision 1c, that the defendant still has not successfully completed the court-ordered treatment.</p>
	<p>(l) If the defendant has received a stayed sentence for a conviction of a violent crime as defined under section 609.1095, subdivision 1, paragraph (d), except violations of any provisions of chapter 152, the probation officer, or the court if the defendant is on unsupervised probation, shall notify the prosecuting authority six months prior to the expiration or early discharge of a stayed sentence that the stayed sentence will expire or that the defendant will be discharged early from a stayed sentence. Notwithstanding the maximum periods specified for stays of sentences under paragraph (a) or (b), upon motion by the prosecuting authority and hearing, a court may extend a defendant's term of probation up to three years if it finds by a preponderance of the evidence that the defendant remains a threat to public safety. In making this determination, the court shall consider the following:</p> <ol style="list-style-type: none">(1) the seriousness and frequency of any previous violations of the conditions of probation;(2) any pending probation violations or criminal offenses for which a violation report or criminal charge has been filed with a court;(3) whether the defendant has been convicted of additional criminal offenses while on probation; and(4) whether the court issued a domestic abuse no contact order pursuant to section 629.75, subdivision 1, and whether such an order remains in effect. Upon motion of the prosecuting authority and hearing, the

	<p>extension of probation on the basis that the defendant remains a threat to public safety may be extended by the court for up to two additional years if the court, using the same factors as above, finds by a preponderance of the evidence that the defendant remains a threat to public safety. Any extensions of probation ordered by the court under this subdivision may not exceed the maximum period for which the sentence of imprisonment might have been imposed.</p>
<p>NOTE: THE ELIMINATION OF THE CUSTODY STATUS POINT UPON DISCHARGE FROM PROBATION WAS ADDRESSED BY THE MSGC IN ITS 2019 MODIFICATIONS. THUS, THE PROVISION IN THE LEGISLATION IS NO LONGER NEEDED.</p>	<p>(m) Notwithstanding the time periods for stays of sentences under paragraphs (a) to (f), a court may discharge a defendant from probation before the expiration of the maximum period prescribed for the probation. If the defendant is discharged from probation before the expiration of the maximum period prescribed for probation, the defendant shall not be subject to a custody status point if charged and convicted of a subsequent crime during the original pronounced probationary sentence.</p>

160.1 Sec. 18. Minnesota Statutes 2018, section 609.135, subdivision 2, is amended to read:

160.2 Subd. 2. **Stay of sentence maximum periods.** (a) If the conviction is for a felony other
160.3 than ~~section 609.2113, subdivision 1 or 2, or 609.2114, subdivision 2, or Minnesota Statutes~~
160.4 ~~2012, section 609.21, subdivision 1a, paragraph (b) or (c)~~ an offense listed in paragraph
160.5 (b), the stay shall be for not more than ~~four~~ five years ~~or the maximum period for which the~~
160.6 ~~sentence of imprisonment might have been imposed, whichever is longer.~~

160.7 (b) If the conviction is for a felony violation of section 609.19, 609.195, 609.20, 609.2662,
160.8 609.2663, 609.2664, 609.268, 609.342, 609.343, 609.344, 609.345, or 609.3451, the stay
160.9 shall be for the maximum time period for which the sentence of imprisonment might have
160.10 been imposed by the court.

160.11 ~~(b)~~ (c) If the conviction is for a gross misdemeanor violation of section 169A.20;
160.12 ~~609.2113, subdivision 3, or 609.3451, or for a felony described in section 609.2113,~~
160.13 ~~subdivision 1 or 2, or 609.2114, subdivision 2,~~ the stay shall be for not more than ~~six~~ five
160.14 years. The court shall provide for unsupervised probation for the last year of the stay unless
160.15 the court finds that the defendant needs supervised probation for all or part of the last year.

160.16 ~~(c)~~ (d) If the conviction is for a gross misdemeanor not specified in paragraph ~~(b)~~ (c),
160.17 the stay shall be for not more than two years.

160.18 ~~(d)~~ (e) If the conviction is for any misdemeanor under section 169A.20; 609.746,
160.19 subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224,
160.20 subdivision 1, in which the victim of the crime was a family or household member as defined
160.21 in section 518B.01, the stay shall be for not more than two years. The court shall provide
160.22 for unsupervised probation for the second year of the stay unless the court finds that the
160.23 defendant needs supervised probation for all or part of the second year.

160.24 ~~(e)~~ (f) If the conviction is for a misdemeanor not specified in paragraph ~~(d)~~ (e), the stay
160.25 shall be for not more than one year.

160.26 ~~(f)~~ (g) The defendant shall be discharged six months after the term of the stay expires,
160.27 unless the stay has been revoked or extended under ~~paragraph (g)~~ paragraphs (h) through
160.28 (l), or the defendant has already been discharged.

160.29 (h) If the defendant has received a stayed sentence for a conviction of a felony offense
160.30 and as a condition of probation was ordered by the court to pay restitution, the probation
160.31 officer, or the court if the defendant is on unsupervised probation, shall notify the prosecuting
160.32 authority six months prior to the expiration or early discharge of a stayed sentence, the
160.33 amount of any unpaid court-ordered restitution. Notwithstanding the maximum periods

161.1 specified for stays of sentences under paragraph (a) or (b), a court may extend a defendant's
161.2 term of probation for up to three years if it finds, at a hearing conducted under subdivision
161.3 1a, that:

161.4 (1) the defendant has not paid court-ordered restitution in accordance with the payment
161.5 schedule or structure; and

161.6 (2) the defendant is likely to not pay the restitution the defendant owes before the term
161.7 of probation expires.

161.8 The extension of probation for failure to pay restitution may be extended by the court for
161.9 up to two additional years if the court finds, at another hearing conducted under subdivision
161.10 1a, that the defendant still has not paid the court-ordered restitution that the defendant owes.
161.11 Nothing in this subdivision limits the court's ability to refer the case to collections under
161.12 section 609.104.

161.13 (i) If the defendant has received a stayed sentence for a conviction of a felony offense
161.14 and as a condition of probation was ordered to successfully complete treatment, the probation
161.15 officer, or the court if the defendant is on unsupervised probation, shall notify the prosecuting
161.16 authority six months prior to the expiration or early discharge of a stayed sentence as to
161.17 whether the defendant has successfully completed court-ordered treatment. Notwithstanding
161.18 the maximum periods specified for stays of sentences under paragraph (a) or (b), a court
161.19 may extend a defendant's term of probation for up to three years if it finds, at a hearing
161.20 conducted under subdivision 1c, that:

161.21 (1) the defendant has failed to complete court-ordered treatment successfully; and

161.22 (2) the defendant is likely not to complete court-ordered treatment before the term of
161.23 probation expires.

161.24 The extension of probation for failure to successfully complete court-ordered treatment may
161.25 be extended by the court for up to an additional two years if the court finds, at another
161.26 hearing conducted under subdivision 1c, that the defendant still has not successfully
161.27 completed the court-ordered treatment.

161.28 ~~(g)~~ (j) Notwithstanding the maximum periods specified for stays of sentences under
161.29 paragraphs ~~(a)~~ (c) to (f), a court may extend a defendant's term of probation for up to one
161.30 year if it finds, at a hearing conducted under subdivision 1a, that:

161.31 (1) the defendant has not paid court-ordered restitution in accordance with the payment
161.32 schedule or structure; and

162.1 (2) the defendant is likely to not pay the restitution the defendant owes before the term
162.2 of probation expires.

162.3 This one-year extension of probation for failure to pay restitution may be extended by the
162.4 court for up to one additional year if the court finds, at another hearing conducted under
162.5 subdivision 1a, that the defendant still has not paid the court-ordered restitution that the
162.6 defendant owes.

162.7 Nothing in this subdivision limits the court's ability to refer the case to collections under
162.8 section 609.104.

162.9 ~~(h)~~ (k) Notwithstanding the maximum periods specified for stays of sentences under
162.10 paragraphs ~~(a)~~ (c) to (f), a court may extend a defendant's term of probation for up to three
162.11 years if it finds, at a hearing conducted under subdivision 1c, that:

162.12 (1) the defendant has failed to complete court-ordered treatment successfully; and

162.13 (2) the defendant is likely not to complete court-ordered treatment before the term of
162.14 probation expires.

162.15 (1) If the defendant has received a stayed sentence for a conviction of a violent crime as
162.16 defined under section 609.1095, subdivision 1, paragraph (d), except violations of any
162.17 provisions of chapter 152, the probation officer, or the court if the defendant is on
162.18 unsupervised probation, shall notify the prosecuting authority six months prior to the
162.19 expiration or early discharge of a stayed sentence that the stayed sentence will expire or
162.20 that the defendant will be discharged early from a stayed sentence. Notwithstanding the
162.21 maximum periods specified for stays of sentences under paragraph (a) or (b), upon motion
162.22 by the prosecuting authority and hearing, a court may extend a defendant's term of probation
162.23 up to three years if it finds by a preponderance of the evidence that the defendant remains
162.24 a threat to public safety. In making this determination, the court shall consider the following:

162.25 (1) the seriousness and frequency of any previous violations of the conditions of
162.26 probation;

162.27 (2) any pending probation violations or criminal offenses for which a violation report
162.28 or criminal charge has been filed with a court;

162.29 (3) whether the defendant has been convicted of additional criminal offenses while on
162.30 probation; and

162.31 (4) whether the court issued a domestic abuse no contact order pursuant to section 629.75,
162.32 subdivision 1, and whether such an order remains in effect.

163.1 Upon motion of the prosecuting authority and hearing, the extension of probation on the
163.2 basis that the defendant remains a threat to public safety may be extended by the court for
163.3 up to two additional years if the court, using the same factors as above, finds by a
163.4 preponderance of the evidence that the defendant remains a threat to public safety. Any
163.5 extensions of probation ordered by the court under this subdivision may not exceed the
163.6 maximum period for which the sentence of imprisonment might have been imposed.

163.7 (m) Notwithstanding the time periods for stays of sentences under paragraphs (a) to (f),
163.8 a court may discharge a defendant from probation before the expiration of the maximum
163.9 period prescribed for the probation. If the defendant is discharged from probation before
163.10 the expiration of the maximum period prescribed for probation, the defendant shall not be
163.11 subject to a custody status point if charged and convicted of a subsequent crime during the
163.12 original pronounced probationary sentence.

163.13 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to stays of
163.14 sentence granted on or after that date.

163.15 Sec. 19. Minnesota Statutes 2018, section 609.135, is amended by adding a subdivision
163.16 to read:

163.17 Subd. 2a. **Stay of sentence maximum periods; sentence stayed before August 1,**
163.18 **2019.** (a) Notwithstanding the sentence announced by the court, an eligible offender shall
163.19 be discharged from probation on August 1, 2024, unless the court extends the defendant's
163.20 term of probation consistent with subdivision 2, paragraph (h), (i), or (l).

163.21 (b) As used in this section, "eligible offender" means a person who:

163.22 (1) was sentenced prior to August 1, 2019, for a felony offense other than an offense
163.23 listed in subdivision 2, paragraph (b);

163.24 (2) received a stay of imposition or execution of sentence pursuant to subdivision 1;

163.25 (3) has not been discharged from probation; and

163.26 (4) is serving a sentence that has not otherwise expired or been executed.

163.27 **EFFECTIVE DATE.** This section is effective August 1, 2019.

163.28 Sec. 20. Minnesota Statutes 2018, section 609.3455, subdivision 2, is amended to read:

163.29 Subd. 2. **Mandatory life sentence without release; egregious first-time and repeat**
163.30 **offenders.** (a) Except as provided in paragraph (c), notwithstanding the statutory maximum
163.31 penalty otherwise applicable to the offense, the court shall sentence a person convicted