

Staff Issue Paper

Assigning Severity Levels

January 31, 2019

Issue

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session”¹ for possible related modifications to the Sentencing Guidelines. The last time the Commission considered a comprehensive re-ranking of offenses was in 1991.

Sentencing Guidelines and Statutory Considerations

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether amended crimes need modifications. The Commission bases its decisions, in part, on the level of harm caused by the offense, similarly ranked offenses, and the culpability of the offender. Statutory maximums are also considered.

There are a number of felony offenses that are intentionally left unranked by the Commission. When crimes are unranked, it may be because they are so seldom charged that no sentencing patterns are discernible, because they are new crimes that are not easily comparable to existing offenses, or because the offense encompasses such a wide range of behavior that it is best to allow the sentencing court discretion in determining the severity level. When an offense is unranked, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. Minn. Sentencing Guidelines § 2.A.4.

The Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list in Section 6 (Offenses Eligible for Permissive Consecutive Sentences)?
3. *Should the offense be added to the list in Section 8 (Severe Violent Offense List)?*

¹ Minn. Stat. § [244.09](#), subd. 11 (related modifications need not be submitted to Legislature in advance).

4. Are there other modifications that must be made to the Guidelines?

Background

The Commission last considered a comprehensive re-ranking of offenses in 1991.

The [1991 Report to the Legislature](#) explained the development of principles for severity level rankings. The Commission reviewed the methodology that the states of Oregon and Louisiana used when developing their severity level rankings. The Commission agreed upon a list of goals to determine where each individual offense should be ranked:

- 1) Articulate and document a specific and objective rationale for determining the appropriate severity level rankings.
- 2) Consider the appropriateness of current severity level rankings that do not reflect the chosen principles and either articulate why the offense(s) should remain at the current ranking or propose to change the ranking to reflect the principles.
- 3) Determine whether and how to address the issue of the decreasing number of crimes ranked at severity level I and the suggestion by some to create a new severity level between VI and VII. Once the Commission has articulated the criteria and principles for determining severity level rankings, the Commission will be in a much better position to address these issues.

The Commission developed three general criteria for determining severity level rankings.

- 1) The Interests Protected by Statute
 - a. Offenses should be grouped according to the interest that is being protected by the statute with each interest carrying a different weight with regard to severity.
 - b. Four interests have been identified by the Commission:
 - i. Person
 - ii. Effects of the Misuse of Chemicals
 - iii. Property
 - iv. Institutional Integrity/Government Process
- 2) Type and Level of Harm Defined by Statute
 - a. Harm or the threat of harm as defined by the statute is the primary determinant of crime severity within each crime grouping.
 - i. Harm – damage or threat of damage to the interests protected by the statute.
 - ii. Type of Harm – is determined by the nature of the protected interest. The type of harm is used to determine the initial seriousness ranking for each crime within a crime group (interest), whenever possible.
 - iii. Level of Harm – ranked according to seriousness to differentiate between crimes of the same interest and harm type. The level of harm varies from interest to interest just as the type of harm varies.

- iv. Multiple interests – if multiple interests are protected by a single statute, additional weight should be given according to the type and level of harm of the additional interests.

3) Culpability of the Offender

- a. Culpability factors are used as defined by the statute or as used in the Jury Instruction Guides.

The Commission worked on developing the specific types and levels of harm and the degrees of culpability for each of the identified interests protected by statute.

The 1991 *Report to the Legislature* indicated that the Commission would complete its assessment of all crimes using the articulated criteria and compare the results with existing severity level rankings. The Commission would then determine if any such modifications needed to be made and, if so, would present such modifications to the Legislature in 1992. The 1992 *Report to the Legislature* reflects no such presentation.

The Commission moved on to rank new or amended crimes each year after the 1991 *Report to the Legislature* was published. The Legislature passed several bills that directed the Commission to develop models and study various sentencing practices.

Discussion for the Commission

Does the Commission wish to comprehensively review severity levels?