

2019 Minnesota Session Laws

Possible Modifications to the Sentencing Guidelines Relating to 2019 Regular and Special Session Laws

May 30, 2019

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § 244.09, subd. 11, the Commission may make such modifications without advance submission to the Legislature. The following crimes, created or amended in the 2019 Minnesota Session Laws, are subject to Commission review.

A. New Crime Laws Affecting the Guidelines

The following new felony offenses were created by the 2019 Minnesota Session Laws and are therefore subject to the Commission’s review.

Commission Action:

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines’ offense lists (e.g., offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

For the new offenses listed below, the Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list in § 6 (Offenses Eligible for Permissive Consecutive Sentences)?
3. Should the offense be added to the list in § 8 (Severe Violent Offense List)?
4. Are there other modifications that must be made to the Guidelines?

1. Criminal Sexual Conduct – Actor is Peace Officer

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, §§ 7–8

Description: Third- and fourth-degree criminal sexual conduct (CSC) offenses (Minn. Stat. §§ 609.344 & 609.345) are amended by adding a clause (subd. 1(p)) whereby a licensed peace officer commits the crime by engaging in sexual penetration (third-degree CSC) or sexual contact (fourth-degree CSC) with someone who is physically or constructively restrained by the officer, or who does not reasonably feel free to leave the officer’s presence. Consent to the sexual activity is not a defense.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [609.344](#) & [609.345](#) (2018).

Fiscal Note Estimated Impact: If one additional prison sentence for a third-degree offense is imposed every other year, it is estimated that this bill will result in the eventual need for three additional prison beds a year.

Demographic Impact Statement: Did not meet screening significance threshold.

Guidelines Considerations: Existing third- and fourth-degree CSC offenses prohibiting sexual conduct by offenders in particular occupational relationships – i.e., psychotherapists, clergy, correctional employees, special transportation service providers, and massage therapists – are ranked on the Sex Offender Grid at:

- Severity Level C: CSC, 3rd Degree (609.344, subd. 1(h), (i), (j), (k), (l), (m), (n), & (o))
- Severity Level E: CSC, 4th Degree (609.344, subd. 1(h), (i), (j), (k), (l), (m), (n), & (o))

MSGC Staff Recommendation: Rank with the existing third- and fourth-degree CSC offenses prohibiting sexual conduct by offenders in particular occupational relationships by including the new offense on the list in § 6 (Offenses Eligible for Permissive Consecutive Sentences). Consistent with existing, similar offenses, staff does not recommend adding the offenses to the list in § 8 (Severe Violent Offense List) because the list is reserved for first- and second-degree CSC with fear of great bodily harm, use of a weapon, or personal injury. The staff-recommended draft-language is illustrated, below.

Illustration: Possible modifications to §§ 4.B, 5.A and 5.B are shown below. In this illustration, the new offense (subd. 1(p)) is ranked with other occupational-relationship sex offenses. The permissive-consecutive list in § 6 is displayed but not altered, thereby including the new offense on the list.

SUGGESTED STYLE CHANGE TO SEX OFFENDER GRID: Currently, the Sex Offender Grid (Guidelines § 4.B) displays all sex offenses. Staff anticipates that the Commission may be adding up to two new offenses to the Sex Offender Grid as a result of the 2019 Session Laws, which would make listing every sex offense on a one-page Sex Offender Grid impracticable. Staff recommends modifying the Sex Offender Grid to show example offenses only, like the Standard Grid and the Drug Offender Grid. Staff also recommends adding plain-language examples of criminal sexual conduct to improve comprehension. The next page (p. 3) is the 2018 Sex Offender Grid, with **highlighted language proposed for deletion**. The following page (p. 4) is an illustration of a possible 2019 Sex Offender Grid, with **highlighted language proposed for addition**.

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
CSC 1st Degree	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
CSC 2nd Degree–(c)(d)(e)(f)(h) Prostitution; Sex Trafficking ³ 1st Degree–1(a)	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
CSC 3rd Degree–(c)(d)(g)(h)(i)(j) (k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree–1a	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
CSC 2nd Degree–(a)(b)(g) CSC 3rd Degree–(a)(e)(f) or (b) with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
CSC 4th Degree–(c)(d)(g)(h)(i)(j) (k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
CSC 4th Degree–(a)(b)(e)(f) CSC 5th Degree Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
CSC 3rd Degree–(b) with subd. 2(2) Indecent Exposure Possession of Child Pornography Solicit Child for Sexual Conduct ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
Registration Of Predatory Offenders	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.


³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)


4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement. "CSC" refers to Criminal Sexual Conduct.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE							
	0	1	2	3	4	5	6 or more	
<i>CSC 1st Degree (e.g., penetration, force, & injury; penetration & victim under 13)</i>	A	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	306 261-360	360 306-360 ²
<i>CSC 2nd Degree—1(c)(d)(e)(f)(h) (e.g., contact, force, & injury)</i>	B	90 90 ³ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
<i>CSC 3rd Degree—1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., penetration & force/occupation)</i>	C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-180	180 153-180 ²
<i>CSC 2nd Degree—1(a)(b)(g) (e.g., contact & victim under 13) CSC 3rd Degree—1(a)(e)(f) or 1(b) with 2(1) (e.g., penetration & child victim)</i>	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142	140 119-168
<i>CSC 4th Degree—1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., contact & force/occupation) Dissemination of Child Pornography²</i>	E	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 ²
<i>CSC 4th Degree—1(a)(b)(e)(f) (e.g., contact & child victim) CSC 5th Degree Possession of Child Pornography (Aggravated Violations)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
<i>CSC 3rd Degree—1(b) with 2(2) (i.e., penetration & child victim 24–48 mo. younger) Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
<i>Failure to Register as a Predatory Offender</i>	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

¹ 12¹=One year and one day

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)

* * *

Severity Level	Offense Title	Statute Number
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C

* * *

Statute Number	Offense Title	Severity Level
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E

* * *

Section 6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree

* * *

2. Child Pornography and Use of Minors in Sexual Performance (Aggravated Violations)

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, §§ 12–18

Description: Under current law, the offense of Child Pornography (Minn. Stat. § 617.247) carries a maximum penalty of 5 years of imprisonment for possession, and 7 years of imprisonment for dissemination. Repeat offenses are aggravated, as are offenses committed by registered predatory offenders. Aggravated offenses carry a maximum penalty of 10 years of imprisonment for possession, and 15 years of imprisonment for dissemination.¹

Under current law, the offense of Use of Minors in Sexual Performance (Minn. Stat. § 617.246) carries a maximum penalty of 10 years of imprisonment. Although repeat offenses carry a greater maximum fine,² a subsequent offense is not subject to a greater maximum period of imprisonment. Offenses committed by registered predatory offenders are not aggravated.

The act establishes three aggravating factors and applies them uniformly to these offenses. The presence of any of the following will increase the maximum penalty applicable to these offenses:

1. A prior conviction or delinquency adjudication for Child Pornography or Use of Minors in Sexual Performance (under current law, this aggravating factor is not as comprehensive);
2. The offender is a registered predatory offender (under current law, this aggravating factor applies only to Child Pornography); or
3. The offense involves a minor under the age of 13 (this is a new aggravating factor).

For Possession and Dissemination of Child Pornography, the act essentially applies the new aggravating factors to the existing maximum penalty structure (with the exception of some fines for aggravated offenses). The new maximum penalties are 5 years/\$5,000 for possession; 7 years/\$10,000 for dissemination; 10 years/\$10,000 for aggravated possession; and 15 years/\$20,000 for aggravated dissemination.

For each of the three ways Use of Minors in Sexual Performance may be committed (use of minor; operation or ownership of business; and dissemination), the act maintains the existing maximum penalty of 10 years of imprisonment and a \$20,000 fine. For aggravated offenses, the act adds a new maximum penalty of 15 years of imprisonment to the existing \$40,000 fine.

The following two tables are a simplified illustration of these changes. Table 1 shows the current statutory maximums (and Guidelines severity levels); Table 2 shows the new statutory maximums (and example severity levels shown in the illustration, below).

¹ Maximum fines are \$5,000 for first-time possession and possession by a predatory offender, \$10,000 for repeat possession; \$10,000 for first-time dissemination and dissemination by a predatory offender; and \$20,000 for repeat dissemination.

² Maximum fines are \$20,000 for a first offense and \$40,000 for a repeat offense.

Table 1. Current Statutory Maximum Prison Terms (and Guidelines Severity Levels (SL))

Offense	Aggravating Factor			
	None	Prior Conviction	Predatory Offender	Child Under 13
Possession of Child Pornography	5 years (SL G)	10 years (SL F)	10 years (SL F)	N/A
Dissemination of Child Pornography	7 years (SL E)	15 years (SL D)	15 years (SL D)	N/A
Use of Minors in Sexual Performance	10 years (SL E)	10 years (SL E)	N/A	N/A

Table 2. New Statutory Maximum Prison Terms (and Illustrated Severity Levels (SL))

Offense	Aggravating Factor			
	None	Prior Conviction	Predatory Offender	Child Under 13
Possession of Child Pornography	5 years (SL G)	10 years (SL F)	10 years (SL F)	10 years (SL F)
Dissemination of Child Pornography	7 years (SL E)	15 years (SL D)	15 years (SL D)	15 years (SL D)
Use of Minors in Sexual Performance	10 years (SL E)	15 years (SL D)	15 years (SL D)	15 years (SL D)

The act also increases, from 10 years to 15 years, the conditional release term applicable to violators of these offenses who had previously been convicted of one of these offenses or of a CSC offense.

In addition to these changes, the act requires the Commission to comprehensively review its ranking of these offenses. This mandate is discussed on page 30, below.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [617.246](#) & [617.247](#) (2018).

Fiscal Note Estimated Impact: For Child Pornography, 5 dissemination offenders sentenced at Severity Level D rather than E annually, requiring 1 additional prison bed; and 46 possession offenders sentenced at Severity Level F rather than G, requiring 16 additional prison beds. For Use of Minors in Sexual Performance, 2 offenders sentenced at Severity Level D rather than E, resulting in 4 additional prison beds.

Demographic Impact Statement It is estimated that the resulting demographic characteristics of the occupants of the prison beds would be as follows.

Amended Provisions	Demographic Characteristics of Past Prison Sentences							
	Gender		Race or Ethnicity		Judicial District			
	Category	Percent	Category	Percent	No.	Percent	No.	Percent
Use Minors ³	Male	100%	White	100%	1	50%	6	50%
Child Pornography ⁴	Male	100%	White	94.2%	1	20.4%	6	2.9%
	Female	0%	Black	1.9%	2	9.7%	7	8.7%
			Am. Indian	1%	3	7.8%	8	1.9%
			Hispanic	1.9%	4	26.2%	9	3.9%
			Asian	1%	5	4.9%	10	13.6%

Guidelines Considerations: The following Severity Levels are currently assigned to these offenses:

- G: Possession of Child Pornography
- F: Possession of Child Pornography (Subsequent or by Predatory Offender)
- E: Use Minors in Sexual Performance
- E: Dissemination of Child Pornography
- D: Dissemination of Child Pornography (Subsequent or by Predatory Offender)

MSGC Staff Recommendation: Pending completion of the Commission’s comprehensive review of the rankings of these offenses, maintain existing rankings. Treat the new and amended aggravating factors the same as the existing aggravating factors. Assign Severity Level D to Use of Minors in Sexual Performance (Aggravated Violations). Make “Child Pornography” terminology consistent. Clarify references to Minn. Stat. §§ 617.246 & 617.247 offenses.

Illustration: Possible modifications to §§ 5.A and 5.B are shown below. In this illustration, the new Child Pornography aggravating factor—relating to preteen victims—is treated the same as the existing aggravating factors involving repeat offenses and offenses by predatory offenders, and all are grouped under the common label, “Aggravated Violations.” The entirely new offense, Use of Minors in Sexual Performance (Aggravated Violations), is ranked on the Sex Offender Grid at Severity Level D. The term “Child Pornography” is applied uniformly throughout the Guidelines.⁵

³ Demographic characteristics are based on known demographic characteristics of the four offenders sentenced from 2015–2017 for Use of Minors in Sexual Performance under Minn. Stat. § 617.246 who were found to meet the criteria for the new increased statutory maximum. (Source: MSGC monitoring data 2015–2017.)

⁴ Demographic characteristics are based on known demographic characteristics of the 103 offenders sentenced from 2016–2017 for Child Pornography offenses under Minn. Stat. § 617.247 who were found to meet the criteria for the new increased statutory maximum. (Source: MSGC monitoring data 2016–2017.)

⁵ The term “Pictorial Representation of Minors” has not appeared in Minn. Stat. § 617.247 since 1999.

Like other offenses on the Sex Offender Grid, the new offense is included on the permissive-consecutive list (§ 6). The offense is not included on the severe violent offender list (§ 8).

Regarding modifications to the Sex Offender Grid (§ 4.B)—

- The 2019 Sex Offender Grid illustrated on page 4 would change the name of the Severity Level F offense from “Possession of Child Pornography (Subsequent or by Predatory Offender)” to “Possession of Child Pornography (Aggravated Violations)”
- If the Commission does not adopt the suggested style change to the Sex Offender Grid as described on page 2, then it will be necessary to make a similar change to the existing Severity Level D offense (substituting “Aggravated” for “Subsequent or by Predatory Offender”), and to add a new offense to the Grid at Severity Level D: “Use of Minors in Sexual Performance (Aggravated).”

Comment

* * *

2.B.105. *If an offense has been repealed, but the elements of that offense have been incorporated into another felony statute, determine the appropriate severity level based on the severity level ranking for the current felony offense containing those similar elements. For example, in 2010, the Legislature recodified violations of domestic abuse no contact orders from Minn. Stat. § 518B.01, subd. 22(d) into Minn. Stat. § 629.75, subd. 2(d). This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table. For example, ~~possession of pornographic work involving minors~~ dissemination of child pornography under Minn. Stat. § 617.247, subd. 3(a), was unranked until August 1, 2006. It is currently ranked at Severity Level E, and receives a weight of ~~1½~~ 1½ points.*

* * *

[2.E.]3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.

- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(d).
- First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in ~~a~~ sexual performance. Minn. Stat. § 617.246, subd. 7.
- ~~Possession of pornographic work involving minors.~~ Child pornography. Minn. Stat. § 617.247, subd. 9.

* * *

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
D	Dissemination of Child Pornography (Subsequent or by Predatory Offender) (Aggravated Violations)	617.247, subd. 3(b)
	Use of Minors in Sexual Performance (Aggravated Violations)	617.246, subd. 2(b), 3(b), 4(b)

* * *

Severity Level	Offense Title	Statute Number
E	Use Minors in Sexual Performance	617.246 subd. 2,3,4
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)

* * *

Severity Level	Offense Title	Statute Number
F	Possession of Child Pornography (Subsequent or by Predatory Offender) (Aggravated Violations)	617.247, subd. 4(b)

* * *

Severity Level	Offense Title	Statute Number
G	Possession of Child Pornography	617.247, subd. 4(a)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance Prohibited	E
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance (Aggravated Violations)	D
617.247 subd. 3	Dissemination of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	D
617.247 subd. 3(a)	Dissemination of Pictorial Representation of Minors Child Pornography	E*
617.247 subd. 3(b)	Dissemination of Child Pornography (Aggravated Violations)	D
617.247 subd. 4	Possession of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	F
617.247 subd. 4(a)	Possession of Pictorial Representation of Minors Child Pornography	G
617.247 subd. 4(b)	Possession of Child Pornography (Aggravated Violations)	E

* * *

Section 6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance Prohibited
617.246, subd. 3	Operation/Owner Use of Minors in Sexual Performance
617.246, subd. 4	Dissemination Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	<u>Use of Minors in Sexual Performance (Aggravated Violations)</u>
617.247, subd. 3(a)	Dissemination of Pictorial Representations of Minors <u>Child Pornography</u>
617.247, subd. 3(b)	Dissemination by Predatory Offender of <u>Child Pornography (Aggravated Violations)</u>
617.247, subd. 4(a)	Possession of Pictorial Representations of Minors <u>Child Pornography</u>
617.247, subd. 4(b)	Possession by Predatory Offender of <u>Child Pornography (Aggravated Violations)</u>

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.776	Interference with Emergency Comm.	5	36 months	CHS 4
617.247, subd. 3(a)	Dissemination of Pictorial Representation of Minors <u>Child Pornography</u>	E	84 months	CHS 5

3. Surreptitious Observation Device (Minor Victim and Sexual Intent)

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, § 11

Description: Interference with privacy (surreptitious intrusion; observation device) (Minn. Stat. § 609.746), a gross misdemeanor, is committed when a person, with intent to intrude upon or interfere with privacy, does either of the following:

- **Surreptitious Intrusion:** Surreptitiously gazes, stares or peeps in a window or aperture of a house, hotel room, tanning booth, or other place where a person has an expectation of privacy and has exposed, or is likely to expose, their intimate parts or underwear.
- **Surreptitious Observation Device:** Surreptitiously installs or uses a device for observing, photographing, recording, amplifying or broadcasting sounds or events through such a window or aperture.

Under existing law (subd. 1(e)), a violation becomes a felony if committed against a minor victim, provided the offender knew or had reason to know the minor was present. A subsequent violation is also a felony. For either felony, the maximum penalty is two years imprisonment, a \$5,000 fine, or both.

A new felony is created under subdivision 1(f), with a maximum penalty of four years in prison, a \$5,000 fine, or both. The new felony applies only to Surreptitious Observation Device offenses, not to Surreptitious Intrusion offenses. In addition, the new felony has these additional requirements:

- The victim must be under the age of 18, and the offender must know or have reason to know the minor victim is present (an existing felony element);
- The offender must be more than 36 months older than the victim (a new element); and
- The violation must be committed with sexual intent (a new element).

The new felony is added to the list of offenses for which persons are required to register as predatory offenders under Minn. Stat. § 243.166.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [243.166](#) & [609.746](#) (2018).

Fiscal Note Estimated Impact: Seven new felony offenders per year.

Demographic Impact Statement It is estimated that the resulting demographic characteristics of the occupants of the prison beds⁶ would be as follows.

⁶ Demographic characteristics are based on known demographic characteristics of the 14 offenders sentenced from 2015–2017 for surreptitious intrusion under Minn. Stat. § 609.344 subd. 1(e) who were found to meet the criteria for the new offense. (Source: MSGC monitoring data 2015–2017.)

Demographic Characteristics of Past Prison Sentences							
Gender		Race or Ethnicity		Judicial District			
Category	Percent	Category	Percent	No.	Percent	No.	Percent
Male	100%	White	85.7%	1	7.1%	6	7.1%
Female	0%	Black	0%	2	7.1%	7	21.4%
		Am. Indian	7.1%	3	7.1%	8	0%
		Hispanic	7.1%	4	7.1%	9	14.2%
		Asian	0%	5	0%	10	35.7%

Guidelines Considerations: A subsequent violation of the existing offense, or a violation against a minor, is a felony with a two-year statutory maximum, ranked on the Standard Grid at Severity Level 1. The offense is not found on the list of Offenses Eligible for Permissive Consecutive Sentences (§ 6).

MSGC Staff Recommendation: Assign a severity level to the new offense and consider other modifications to the Guidelines. Rank on the Standard Grid at a severity level higher than Severity Level 1 (because the elements and maximum penalty are more serious than the existing felony’s), or rank on the Sex Offender Grid (because violations are committed with sexual intent⁷ and offenders are required to register as predatory offenders⁸).

For purposes of the fiscal note, MSGC staff assumed the Commission would rank the offense at either Severity Level 2 or Severity Level 3, severity levels where most offenders are recommended probation according to the Guidelines.

If the Commission ranks the new offense on the Sex Offender Grid, Severity Level G may be most appropriate. Persons with a Criminal History Score of 4 or more are recommended prison. The

⁷ The Guidelines provide the following guidance: “The ‘Sex Offender Grid’ displays the presumptive sentences for criminal sexual conduct, failure to register as a predatory offender, and related offenses as shown on the Sex Offender Grid.” Minn. Sentencing Guidelines § 1.B.15.a (2018). When it proposed the Sex Offender Grid to the Legislature in 2006, the Commission did not define “sex offense,” although the following comment is instructive: “The Commission decided to include Failure to Register as a Sex Offender in the new sex offense sentencing policy. Although this offense is not itself a sex offense, the Commission believes predatory sex offenders that fail to register pose a serious threat to public safety. Inclusion of this offense on the new sex offender grid also permits the Commission to tailor appropriate punishment for these offenders consistent with the statutory minimum and maximum sentences without the constraints of the existing [grid].” Minn. Sentencing Guidelines Comm’n, *Report to the Legislature* (Jan. 2006), p. 18 (retrieved May 24, 2019, at <https://go.usa.gov/xm7ch>).

⁸ But not all predatory offenses are sex offenses (e.g., murder, kidnapping, false imprisonment).

Commission should keep in mind that the presumptive duration will exceed the statutory maximum of four years (48 mos.) at a Criminal History Score of 5.⁹

Illustration: Possible modifications to §§ 5.A, and 5.B are shown below. In this illustration, the new offense is ranked on the Sex Offender Grid at Severity Level G. Like other offenses on the Sex Offender Grid, the offense is included on the permissive-consecutive list (§ 6). The offense is not included on the severe violent offender list (§ 8). Appendix 3 is modified to reflect that the presumptive sentence exceeds the statutory maximum.

Regarding modifications to the Sex Offender Grid (§ 4.B): If the Commission does not adopt the suggested style change to the Sex Offender Grid as described on page 2, and the Commission chooses to rank this offense on the Sex Offender Grid, then it will be necessary to add a new offense to the Grid at Severity Level G: “Surreptitious Observation Device (Minor, Sexual Intent).”

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
G	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>609.746, subd. 1(f)</u>

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>G</u>

* * *

⁹ Solicitation of Children to Engage in Sexual Conduct has a similar problem, being ranked at Severity Level G with a three-year statutory maximum.

Section 6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.746, subd. 1(f)</u>	<u>Surreptitious Observation Device (Minor Victim and Sexual Intent)</u>	<u>G</u>	<u>48</u>	<u>CHS 5</u>

4. Wage Theft

2019 Minn. Laws 1st Sp. Sess. [ch. 7](#), art. 3, §§ 14–16

Description: Section 15 includes Wage Theft among the theft crimes. As defined in Section 14, “wage theft” occurs when an employer, with intent to defraud, fails to pay earned wages; demands or receives a refund or rebate of earned wages; or inflates or attempts to inflate the appearance of wages above what was actually paid. The section also defines “value” as the difference between wages legally required to be reported or paid and the amount actually reported or paid.

Section 16 amends the theft penalty statute to include Wage Theft among those offenses which, if the value exceeds \$35,000, may be sentenced to a maximum penalty of 20 years in prison and a fine of \$100,000. Under current law, that penalty provision is reserved for Theft of Firearm and to the following theft offenses of over \$35,000: Theft by Check, Theft by False Representation, Theft

by Swindle, Theft of Corporate Property, Unauthorized Distribution of Corporate Property, Workers Compensation Fraud, and Financial Exploitation of a Vulnerable Adult.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. § [609.52](#) (2018).

Fiscal Note Estimated Impact: No fiscal note was requested.

Demographic Impact Statement: Not conducted, as no impact was estimated.

Guidelines Considerations: Check Forgery and Financial Transaction Card Fraud over \$35,000 are ranked at Severity Level (SL) 5. The other Theft Offenses to which the over-\$35,000 threshold apply are ranked at SL 6. Financial Exploitation of a Vulnerable Adult (Over \$35,000) is ranked at SL 7. The Theft Offense list (§ 7) assigns a different SL to listed offenses depending on whether the value is above (SL 3) or below (SL 2) the statutory \$5,000 threshold.

MSGC Staff Recommendation: Rank Wage Theft (Over \$35,000). Add Wage Theft to the Theft Offense List (§ 7).

Illustration: Possible modifications to §§ 5.A and 5.B are shown below. In this illustration, the new offense is added the theft offense list in § 7 and Wage Theft (Over \$35,000) is ranked on the Standard Grid at Severity Level 6, which is consistent with other theft offenses over \$35,000.

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
6	Theft Over \$35,000	609.52, subd. 2(a)(3), (4), (15), & (16), & (19) with 609.52, subd. 3(1)
3	Theft Crimes – Over \$5,000	See section 7: Theft Offense List
2	Theft Crimes – \$5,000, or Less Theft Crimes – \$5,000 or Less	See section 7: Theft Offense List

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
<u>609.52 subd. 2(a)(19) with subd. 3(1)</u>	<u>Wage Theft (Over \$35,000)</u>	<u>6</u>
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft (\$5,001-\$35,000)</u>	<u>3</u>
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft (\$5,000 or Less)</u>	<u>2</u>

* * *

7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

- Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minn. Stat. § 609.52, subdivision 3(3)(a).
- Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minn. Stat. § 609.52, subdivision 3(2).

* * *

Statute Number	Offense Title
<u>609.52 subd. 2(a)(19)</u>	<u>Wage Theft</u>

* * *

B. Amended Crime Laws Affecting the Guidelines

The following existing crimes were amended by the 2019 Minnesota Session Laws and are therefore subject to the Commission's review.

Commission Action:

For the offenses listed below, taking the amendments into consideration, the Commission may decide if or how the offenses should be re-ranked, if there should be any modifications to either the permissive consecutive offense list or severe violent offense list, or if other related Guidelines modifications should be made.

1. Certain Criminal Sexual Conduct Crimes – Repeal of Marital Defense

2019 Minn. Laws [ch. 16](#)

Description: This law repeals Minn. Stat. § 609.349, which provides a voluntary relationship defense for criminal sexual conduct crimes involving the complainant's age or state of mind.

The law repeals the marital and cohabitation defenses now applicable to criminal sexual conduct cases involving complainants who are mentally impaired, mentally incapacitated, physically helpless, or recipients of special transportation. Currently, when sexual penetration or contact would constitute criminal sexual conduct in the first- through fourth-degree because the complainant was mentally impaired, mentally incapacitated, or physically helpless, or because the actor was the complainant's special transportation services provider, Minn. Stat. § 609.349 prohibits prosecution if the actor and complainant were, at the time of the alleged offenses, adults cohabiting in an ongoing voluntary sexual relationship, or are legally married, unless they are living apart and one has filed for legal separation or divorce.

The law also repeals the marital defense now applicable to statutory rape cases. Currently, when sexual penetration or contact would constitute criminal sexual conduct in the first- through fourth-degree because of the age of the complainant, alone or in combination with the actor's position of authority over the complainant, Minn. Stat. § 609.349 prohibits prosecution if the actor and complainant are legally married, unless they are living apart and one has filed for legal separation or divorce.

Effective Date: July 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. § [609.349](#) (2018).

Fiscal Note Estimated Impact: It is estimated that this repeal will result in three additional sentences a year for Minn. Stat. § 609.344, subd. 1(d) with two of them receiving a prison disposition. With an average time to serve of 48 months, there will be a need for eight additional prison beds; and five additional sentences a year for Minn. Stat. § 609.345, subd. 1(d), with one of

them receiving a prison disposition. With an average time to serve of 40 months, there will be a need for three additional prison beds. The total estimated impact is 11 beds.

Demographic Impact Statement: There was no reliable foundation for the assumption that the existing and new offenders would be the same population or share demographic characteristics. Staff had no access to reliable, scientifically acceptable data that would inform the DIS. Therefore, consistent with the policy, no DIS was prepared.

Guidelines Considerations: Offenses to which the repealed voluntary relationship defense apply are ranked on the Sex Offender Grid at:

- Severity Level A: Criminal Sexual Conduct, 1st Degree (609.342, subd. 1(b) & (c))
- Severity Level C: CSC, 3rd Degree (609.344, subd. 1(d) & (n))
- Severity Level D: CSC, 2nd Degree (609.343, subd. 1(a) & (b))
- Severity Level D: CSC, 3rd Degree (609.344, subd. 1(a), (b), & (e))
- Severity level E: CSC, 4th Degree (609.345, subd. 1(d) & (n))
- Severity level F: CSC, 4th Degree (609.345, subd. 1(a), (b), & (e))
- Severity Level G: CSC, 3rd Degree (609.344, subd. 1(b))

MSGC Staff Recommendation: Maintain the existing severity-level rankings and make no modifications to the Guidelines.

2. Certain Criminal Sexual Conduct Crimes – Current or Recent Position of Authority

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, §§ 2–8

Description: The definition of position of authority in Minn. Stat. § 609.341 subd. 10, is amended to include persons in “current or recent” positions of authority. The definition is expanded to include persons who have “assumed” positions of authority “within 120 days immediately preceding” the act. This expanded definition is applied to first- through fourth-degree criminal sexual conduct offenses.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [609.341](#); [609.342](#); [609.343](#); [609.344](#); [609.345](#) (2018).

Fiscal Note Estimated Impact: One additional first-degree offender a year will receive a prison sentence. This would result in the eventual need for 12 additional prison beds a year, beginning with one bed in FY2021.

Demographic Impact Statement: It is estimated that the resulting demographic characteristics of the occupants of the prison beds¹⁰ would be as follows.

Demographic Characteristics of Past Prison Sentences							
Gender		Race or Ethnicity		Judicial District			
Category	Percent	Category	Percent	No.	Percent	No.	Percent
Male	100%	White	64.7%	1	17.6%	6	5.9%
Female	0%	Black	23.5%	2	0%	7	11.8%
		Am. Indian	0%	3	5.9%	8	5.9%
		Hispanic	5.9%	4	5.9%	9	17.6%
		Asian	5.9%	5	0%	10	29.4%

Guidelines Considerations: Position of authority offenses are ranked on the Sex Offender Grid at:

- Severity Level A: Criminal Sexual Conduct, 1st Degree (609.342, subd. 1(b))
- Severity Level D: 2nd Degree (609.343, subd. 1(b))
- Severity Level D: 3rd Degree (609.344, subd. 1(e))
- Severity level F: 4th Degree (609.345, subds. 1(b) (if MOC code indicates POA) and 1(e))

MSGC Staff Recommendation: Maintain the existing severity-level rankings and make no modifications to the Guidelines.

3. Criminal Sexual Conduct in the First Degree – Clarification of Scope

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), Art. 4, § 5

Description: Clarifies criminal sexual conduct in the first degree by amending Minn. Stat. § 609.342, subd. 1. Specifically, by changing the term “sexual penetration” to “act,” it clarifies that all section’s provisions apply to either “sexual penetration” or “sexual contact with a person under age 13” (as defined in Minn. Stat. § 609.341, subd. 11(c)). The change abrogates *State v. Ortega-Rodriguez*, 920 N.W.2d 642 (Minn. 2018).

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [609.342](#) (2018).

Fiscal Note Estimated Impact: None.

¹⁰ Demographic characteristics are based on known demographic characteristics of the 17 offenders receiving prison sentences from 2013–2017 for first degree CSC under Minn. Stat. § 609.342 subds. 1(b). (Source: MSGC monitoring data 2013-2017.)

Demographic Impact Statement: Did not meet the threshold.

Guidelines Considerations: Criminal sexual conduct in the first degree is ranked on the Sex Offender Grid at Severity Level A. It is on the list in § 6 (Offenses Eligible for Permissive Consecutive Sentences) and certain provisions (fear of great bodily harm, use of a weapon, or personal injury) are listed in § 8 (Severe Violent Offense List).

MSGC Staff Recommendation: Maintain the existing severity-level ranking and make no modifications to the Guidelines.

4. Criminal Sexual Conduct in the Fifth Degree – Clothed-Buttocks Exception Repeal

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, § 9

Description: Minn. Stat. § 609.3451, subd. 1(1), which prohibits nonconsensual sexual contact, is amended by eliminating the exclusion of “the intentional touching of the clothing covering the immediate area of the buttocks” from the definition of “sexual contact.”

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [609.3451](#) (2018).

Fiscal Note Estimated Impact: One offender a year would be sentenced for the existing felony fifth-degree CSC offense as a result.

Demographic Impact Statement: Did not meet the threshold.

Guidelines Considerations: Felony Criminal Sexual Conduct in the Fifth Degree is ranked on the Sex Offender Grid at Severity Level F and is on the list of offenses eligible for permissive consecutive sentencing in § 6.

Most violations of Minn. Stat. § 609.3451, subd. 1(1) are gross misdemeanors. In 2014, the felony provisions of fifth-degree CSC were expanded to include the behavior described in subd. 1(1) if the offender has any prior CSC offense or other specified offense. According to MSGC Monitoring Data, through 2017, two offenders have been sentenced for this offense. It is possible that future offenders will commit an offense involving intentional touching of the clothing covering the buttocks who have the requisite prior offense(s) required to charge the felony fifth-degree offense.

MSGC Staff Recommendation: Maintain the existing severity-level ranking and make no modifications to the Guidelines.

5. Failure to Register as a Predatory Offender – Offender’s State of Mind Clarified

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 5, § 9

Description: Currently, an offender commits a crime who “knowingly violates” the predatory offender registration (POR) statute’s provisions. This phrase was construed, in *State v. Mikulak*, 903

N.W.2d 600 (Minn. 2017), to require actual knowledge of the POR law’s provisions. Article 5 of the omnibus public safety bill makes a number of changes to Minn. Stat. § 243.166, the POR statute. In response to *Mikaluk*,¹¹ Section 9 eliminates the “knowingly violates” requirement. After the change, an offender who was given notice of, knew, or reasonably should have known of, the duty to register, commits a crime by knowingly committing an act or omission that violates the law’s provisions. The penalty provisions are unchanged.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [243.166](#) (2018).

Fiscal Note Estimated Impact: Not requested.

Demographic Impact Statement: Not estimated.

Guidelines Considerations: Failure to Register as a Predatory Offender is ranked alone at Severity Level H on the Sex Offender Grid. Consistent with the POR statute, which requires commitment for a year and a day for a first offense and two years for repeat offenses, the presumptive disposition for all such offenses is commitment.

MSGC Staff Recommendation: Maintain the existing severity-level ranking and make no modifications to the Guidelines.

6. Felony Driving While Impaired (DWI) – Expanded List of Prior Offenses

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 6, § 3

Description: A previous conviction for a criminal vehicular homicide or criminal vehicular operation from Minnesota or another jurisdiction qualifies as a prior impaired driving incident.

Effective Date: August 1, 2019, and applies to crimes committed on or after that date.

Reference: Minn. Stat. §§ [169A.24](#) (2018).

Fiscal Note Estimated Impact: Not requested.

Demographic Impact Statement: Not requested.

Guidelines Considerations: Felony DWI is ranked on the Standard Grid at Severity Level 7. If the current conviction is for felony DWI and if, prior to the commission of the current offense, the offender had a previous conviction (as conviction is defined in Minn. Stat. § 609.02 subd. 5) for a felony DWI or for a criminal vehicular homicide or operation as defined in Minn. Stat. § 169A.24,

¹¹ Senate Counsel Research Summary, SF 111 (May 9, 2019) (retrieved May 29, 2019, at https://www.senate.mn/departments/scr/billsumm/summary_display_from_db.php?ls=91&id=7007).

subd. 1(3), the presumptive disposition is commitment. Additionally, it is on the list in § 6 (Offenses Eligible for Permissive Consecutive Sentences).

MSGC Staff Recommendation: Maintain the existing severity-level ranking and make no modifications to the Guidelines.

7. Careless & Reckless Driving – Operating or Halting Transit Vehicle

2019 Minn. Laws [ch. 10](#)

Description: Amends the description of reckless driving under Minn. Stat. § [169.13](#) to include driving a light rail transit vehicle in addition of a motor vehicle. It is a misdemeanor unless the person causes great bodily harm or death. The law also amends careless driving by adding a misdemeanor for operating or halting a light rail transit vehicle carelessly or heedlessly in disregard of the rights of others or in a manner that endangers or is likely to endanger any property or any person.

Effective Date: Day after final enactment. Signed by the Governor April 12, 2019.

Reference: Minn. Stat. § [169.13](#) (2018).

Fiscal Note Estimated Impact: Not requested.

Demographic Impact Statement: Not requested.

Guidelines Considerations: A person may receive one (or one-half) custody status point(s) if he or she was on custody status at the time of the current felony offense for gross misdemeanor reckless driving. 2018 Minn. Guidelines § 2.B.2.

Additionally, prior gross misdemeanor reckless driving receives one unit (four units=one point) towards the assignment of a maximum misdemeanor/gross misdemeanor point. 2018 Minn. Guidelines § 2.B.3.

MSGC Staff Recommendation: Maintain the existing policy because gross misdemeanor reckless driving of a transit vehicle, although not expected to be a common crime, would seem to warrant inclusion in one's criminal history score.

C. Technical Amendments to Crime Laws Affecting the Guidelines

These are session laws in which technical revisions were made. Such laws must be considered by the Commission for possible modification to the Sentencing Guidelines. Staff recommends making modifications due to these technical amendments, as follows.

Harassment and Stalking Terminology Change

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 2, § 17–21, 26

Description: In Minn. Stat. § 609.749 (Stalking), the term “stalking” or “stalks” is changed to “harass,” “harassment,” or “harasses.” The term “pattern of stalking conduct” is changed to “stalking.”

Effective Date: Not specified (Aug. 1, 2019, per Minn. Stat. § 645.02).

Reference: Minn. Stat. §§ [609.749](#) (2018).

Guidelines Considerations: The term “stalking” is used throughout the Guidelines. The existing offense of “Violation of Harassment Restraining Order” is unrelated.

MSGC Staff Recommendation: Make conforming modifications to 2018 Minn. Sentencing Guidelines §§ 2.D.308, 5.A, 5.B, 6. It is also recommended to delete “or Subsequent” from references to 2nd Violations, as violations subsequent to 2nd Violations would be “3rd or Subsequent Violations,” which is a more severe offense.

* * *

2.D.308. *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when sentencing an offender for a crime with an increased statutory maximum penalty under Minn. Stat. § 609.2233 (felony assault motivated by bias), or for a crime that was elevated to a felony offense because of bias motivation (e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault); 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(a)(1) (~~stalking harassment~~)). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.* * * *

5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
5	Stalking Harassment (3rd or Subsequent Violations)	609.749, subd. 4(b)
	Stalking (Pattern of Stalking Conduct)	609.749, subd. 5
4	Stalking Harassment (Aggravated Violations)	609.749, subd. 3(a),(b)
	Stalking Harassment (2nd or Subsequent Violation)	609.749, subd. 4(a)

* * *

5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.749, subd. 3(a)(b)	Stalking Harassment (Aggravated Violations)	4
609.749, subd. 4(a)	Stalking Harassment (2nd or Subsequent Violation)	4
609.749, subd. 4(b)	Stalking Harassment (3rd or Subsequent Violations)	5
609.749, subd. 5	Stalking (Pattern of Conduct)	5

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
609.749, subd. 3	Stalking Harassment (Aggravated Violations)
609.749, subd. 4	Stalking Harassment (Subsequent Violations)
609.749, subd. 5	Stalking (Pattern of Conduct)

* * *

D. Legislative Directives to the Commission

2019 Minnesota Session Laws, 1st Special Session, may be read as containing three directives to the Commission.

1. Appointment to Criminal Sexual Conduct Statutory Reform Working Group

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, § 21

Description: Establishes a working group on criminal sexual conduct statutory reform, which must submit a report to the Legislature no later than January 15, 2021. The Commissioner of Public Safety is required to invite various participants to the working group, including a “representative[] from ... the Sentencing Guidelines Commission” The working group must convene by September 1, 2019. The act’s language follows:

Sec. 21. CRIMINAL SEXUAL CONDUCT STATUTORY REFORM WORKING GROUP; REPORT.

*Subdivision 1. **Direction.** By September 1, 2019, the commissioner of public safety shall convene a working group on criminal sexual conduct statutory reform. The commissioner shall invite representatives from city and county prosecuting agencies, statewide crime victim coalitions, the Minnesota judicial branch, the Minnesota Board of Public Defense, private criminal defense attorneys, the Department of Public Safety, the Department of Human Services, the Sentencing Guidelines Commission, state and local law enforcement agencies, and other interested parties to participate in the working group. The commissioner shall ensure that the membership of the working group is balanced among the various representatives and reflects a broad spectrum of viewpoints, and is inclusive of marginalized communities as well as victim and survivor voices.*

*Subd. 2. **Duties.** The working group must review, assess, and make specific recommendations with regard to substantive and technical amendments to Minnesota Statutes, sections 609.341 to 609.3451, 609.3453 to 609.3455, 609.349, 628.26, and any other related criminal laws.*

*Subd. 3. **Report to legislature.** The commissioner shall file a report detailing the working group's findings and recommendations with the chairs and ranking minority members of the house of representatives and senate committees and divisions having jurisdiction over public safety and judiciary policy and finance by January 15, 2021.*

2. Appointment to Community Competency Restoration Task Force

2019 Minn. Laws 1st Sp. Sess. [ch. 9](#), art. 6, § 77

Description: Establishes the Community Competency Restoration Task Force, which must submit a final report to the Legislature no later than February 1, 2021. Task Force membership includes “a representative appointed by the Minnesota Sentencing Guidelines Commission”; the act requires appointments to be made by July 15, 2019. The act’s language follows:

Sec. 77. COMMUNITY COMPETENCY RESTORATION TASK FORCE.

Subdivision 1. Establishment; purpose. *The Community Competency Restoration Task Force is established to evaluate and study community competency restoration programs and develop recommendations to address the needs of individuals deemed incompetent to stand trial.*

Subd. 2. Membership. *(a) The Community Competency Restoration Task Force consists of the following members, appointed as follows:*

- (1) a representative appointed by the governor's office;*
- (2) the commissioner of human services or designee;*
- (3) the commissioner of corrections or designee;*
- (4) a representative from direct care and treatment services with experience in competency evaluations, appointed by the commissioner of human services;*
- (5) a representative appointed by the designated State Protection and Advocacy system;*
- (6) the ombudsman for mental health and developmental disabilities;*
- (7) a representative appointed by the Minnesota Hospital Association;*
- (8) a representative appointed by the Association of Minnesota Counties;*
- (9) two representatives appointed by the Minnesota Association of County Social Service Administrators: one from the seven-county metropolitan area, as defined under Minnesota Statutes, section 473.121, subdivision 2, and one from outside the seven-county metropolitan area;*
- (10) a representative appointed by the Minnesota Board of Public Defense;*
- (11) a representative appointed by the Minnesota County Attorneys Association;*
- (12) a representative appointed by the Minnesota Chiefs of Police Association;*
- (13) a representative appointed by the Minnesota Psychiatric Society;*
- (14) a representative appointed by the Minnesota Psychological Association;*
- (15) a representative appointed by the State Court Administrator;*

- (16) a representative appointed by the Minnesota Association of Community Mental Health Programs;*
- (17) a representative appointed by the Minnesota Sheriffs' Association;*
- (18) a representative appointed by the Minnesota Sentencing Guidelines Commission;*
- (19) a jail administrator appointed by the commissioner of corrections;*
- (20) a representative from an organization providing reentry services appointed by the commissioner of corrections;*
- (21) a representative from a mental health advocacy organization appointed by the commissioner of human services;*
- (22) a person with direct experience with competency restoration appointed by the commissioner of human services;*
- (23) representatives from organizations representing racial and ethnic groups overrepresented in the justice system appointed by the commissioner of corrections;*
and
- (24) a crime victim appointed by the commissioner of corrections.*

(b) Appointments to the task force must be made no later than July 15, 2019, and members of the task force may be compensated as provided under Minnesota Statutes, section 15.059, subdivision 3.

*Subd. 3. **Duties.** The task force must:*

- (1) identify current services and resources available for individuals in the criminal justice system who have been found incompetent to stand trial;*
- (2) analyze current trends of competency referrals by county and the impact of any diversion projects or stepping-up initiatives;*
- (3) analyze selected case reviews and other data to identify risk levels of those individuals, service usage, housing status, and health insurance status prior to being jailed;*
- (4) research how other states address this issue, including funding and structure of community competency restoration programs, and jail-based programs; and*
- (5) develop recommendations to address the growing number of individuals deemed incompetent to stand trial including increasing prevention and diversion efforts, providing a timely process for reducing the amount of time individuals remain in the criminal justice system, determining how to provide and fund competency restoration services in the community, and defining the role of the counties and state in providing competency restoration.*

*Subd. 4. **Officers; meetings.** (a) The commissioner of human services shall convene the first meeting of the task force no later than August 1, 2019.*

(b) The task force must elect a chair and vice-chair from among its members and may elect other officers as necessary.

(c) The task force is subject to the Minnesota Open Meeting Law under Minnesota Statutes, chapter 13D.

*Subd. 5. **Staff.** (a) The commissioner of human services must provide staff assistance to support the task force's work.*

(b) The task force may utilize the expertise of the Council of State Governments Justice Center.

*Subd. 6. **Report required.** (a) By February 1, 2020, the task force shall submit a report on its progress and findings to the chairs and ranking minority members of the legislative committees with jurisdiction over mental health and corrections.*

(b) By February 1, 2021, the task force must submit a written report including recommendations to address the growing number of individuals deemed incompetent to stand trial to the chairs and ranking minority members of the legislative committees with jurisdiction over mental health and corrections.

*Subd. 7. **Expiration.** The task force expires upon submission of the report in subdivision 6, paragraph (b), or February 1, 2021, whichever is later.*

EFFECTIVE DATE. *This section is effective the day following final enactment.*

3. Comprehensive Review – Use Minors in Sexual Performance & Child Pornography

2019 Minn. Laws 1st Sp. Sess. [ch. 5](#), art. 4, § 22

Description: The directive reads as follows:

Sec. 22. 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 [(use of minors in sexual performance prohibited)] and 617.247 [(possession of pornographic work involving minors)], as compared to similar crimes, including other sex offenses and other offenses with similar maximum penalties.