

Staff-Drafted Sentencing Guidelines Changes

Technical Modifications to the 2019 Guidelines and Commentary

April 30, 2019

Background

Apparent technical errors in the 2018 Guidelines and Commentary and proposed 2019 Guidelines' Amendments are brought before the Commission. MSGC staff recommends corrections to take effect in the August 1, 2019, edition of the Minnesota Sentencing Guidelines and Commentary.

A. Technical Errors in 2018 Guidelines and Commentary

The following are apparent technical errors and inconsistencies in the 2018 Minn. Sentencing Guidelines. Staff recommends making corrections as drafted for the Commission's consideration.

- 1. Correct cross-references in comment:** Comment 2.B.107 contains commentary on both determining the severity level when there are multiple offenses occurring in a single course of conduct and how to determine the date of offense. A cross-reference to the official Guidelines is too specific. The cross-reference should be to the more general section, § 2, Determining Presumptive Sentences; not to the more specific section, § 2.A, Offense Severity.
 - **Suggested Correction:** The suggested correction to the 2019 Minn. Sentencing Guidelines appears, below.

[2]B. Criminal History

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2.B.107. *In cases of multiple offenses occurring in a single course of conduct in which state law prohibits the offender from being sentenced on more than one offense, only the offense at the highest severity level should be considered. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing the criminal history score, the felony*

sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same court, sentencing must occur in the order in which the offenses occurred. The dates of the offenses must be determined according to the procedures in section ~~2A. 2~~.

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2. Clarify example on standard sentencing grid: The grids contain examples of offenses by severity level in the leftmost column. The example for murder in the third degree at severity level 10 is ambiguous because there is also a murder in the third degree ranked at severity level 9 that involves controlled substances. This ambiguity is most likely due to the law change when paragraph (b) for controlled substances went into effect in 1987.¹ The example should be clarified.

- **Suggested Clarification:** Staff suggests clarifying the ambiguity in 2019 Minn. Sentencing Guidelines § 4.A, by adding to the example for murder in the third degree, “(Depraved Mind)” at Severity Level 10 and adding “Murder, 3rd Degree (Controlled Substances)” at Severity Level 9. Staff also recommends removing redundancies, capitalizing examples for consistency, and moving “Murder, 3rd Degree” below “Murder, 2nd Degree” at Severity Level 10.

4.A. Sentencing Guidelines Grid

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CRIMINAL HISTORY SCORE

| SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics) | | 0 | 1 | 2 | 3 | 4 | 5 | 6 or more |
|---|-----------|----------------|----------------|----------------|----------------|----------------|-----------------------------|-----------------------------|
| <i>Murder, 2nd Degree (Intentional murder; Drive-By-shootings)</i> | 11 | 306 261-367 | 326 278-391 | 346 295-415 | 366 312-439 | 386 329-463 | 406 346-480 ² | 426 363-480 ² |
| <i>Murder, 3rd Degree (Unintentional murder)</i> <i>Murder, 3rd Degree (Depraved Mind)</i> | 10 | 150 128-180 | 165 141-198 | 180 153-216 | 195 166-234 | 210 179-252 | 225 192-270 | 240 204-288 |
| <i>Murder, 3rd Degree (Controlled Substances)</i> <i>Assault, 1st Degree</i> | 9 | 86 74-103 | 98 84-117 | 110 94-132 | 122 104-146 | 134 114-160 | 146 125-175 | 158 135-189 |

¹ Minn. Laws 1987 Regular Session. Ch. 176. Retrieved April 25, 2019, at <https://www.revisor.mn.gov/laws/1987/0/176>.

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- 3. Remove reference to specific statute year:** Where the Guidelines refer to Minn. Stat. § 152.152 in § 2.D.3.a(8), it is not necessary to specify the year “2014” because the intent is to reference the current statute. Additionally, a reference to a specific year is inconsistent with the style.
- **Suggested Correction:** The suggested correction to the 2019 Minn. Sentencing Guidelines appears, below.

[2]D. Departures from the Guidelines

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(8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152-~~(2014)~~.

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- 4. Correct Statute Citation:** The wrong paragraph number is listed for “Theft of Services (Over \$5,000)” in § 5.B. It should be para “(13)” not “(12).” This is a typo that was discovered during the recent theft project and should be corrected.
- **Suggested Correction:** The suggested correction to § 5.B of the 2019 Minn. Sentencing Guidelines appears, below.

5.B. Severity Level by Statutory Citation

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| Statute Number | Offense Title | Severity Level |
|---|-------------------------------------|-----------------------|
| 609.52 subd. 2(a) (12) <u>(13)</u> | Theft of Services (Over \$5,000) | 3 |
| 609.52 subd. 2(a)(13) | Theft of Services (\$5,000 or Less) | 2 |

5. **Correct Statute Citation:** The statute citation for “Financial Transaction Card Fraud (Over \$35,000)” in § 5.A and § 5.B is missing a reference to paragraph (a), which was added to the statute in 1999.²

- **Suggested Correction:** The suggested corrections to § 5 of the 2019 Minn. Sentencing Guidelines appears, below.

5.A. Offense Severity Reference Table

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| Severity Level | Offense Title | Statute Number |
|----------------|--|--------------------------|
| 5 | Financial Transaction Card Fraud (Over \$35,000) | 609.821 subd. 3(a)(1)(i) |

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5.B. Severity Level by Statutory Citation

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| Statute Number | Offense Title | Severity Level |
|--------------------------|--|----------------|
| 609.821 subd. 3(a)(1)(i) | Financial Transaction Card Fraud (Over \$35,000) | 5 |

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6. **Correct Statute Title:** “Unlawful Transfer of Sounds” was changed to “Unlawful Transfers or Sales of Recordings” in 1993.³

- **Suggested Correction:** The suggested corrections to § 5 of the 2019 Minn. Sentencing Guidelines appears, below.

² Minn. Laws 1999 Regular Session. Ch. 218, sec. 5. Retrieved April 25, 2019, at <https://www.revisor.mn.gov/laws/1999/0/218>.

³ Minn. Laws 1993 Regular Session. Ch. 221. Retrieved April 25, 2019, at <https://www.revisor.mn.gov/laws/1993/0/221>.

5.A. Offense Severity Reference Table

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| Severity Level | Offense Title | Statute Number |
|----------------|--|----------------|
| UNRANKED | Unlawful Transfers or Sales of Recordings of Sounds; Sales | 325E.201 |

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5.B. Severity Level by Statutory Citation

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| Statute Number | Offense Title | Severity Level |
|----------------|--|----------------|
| 325E.201 | Unlawful Transfers or Sales of Recordings of Sounds; Sales | Unranked |

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B. Technical Errors in 2019 Guidelines' Amendments

The following are apparent technical errors and inconsistencies in the proposed amendments to the 2019 Minn. Sentencing Guidelines that appear in the 2019 Report to the Legislature.⁴ Staff recommends making corrections as drafted for the Commission's consideration.

- 1. Restore stricken word:** As proposed, without correction, in § 2.B.3.e, the phrase will read "... if ten years has elapsed between the date the initial sentence following the prior conviction and the date of the current offense." It was inadvertent to strike the word "of" between "date" and "the."
 - Suggested Correction:** The suggested correction to appear in the 2019 Minn. Sentencing Guidelines appears, below; the language shown assumes proposed modification will be permitted to take effect.

⁴ Minn. Sentencing Guidelines Comm'n, *Report to the Legislature* (Jan. 11, 2019). Retrieved April 23, 2019, at <http://mn.gov/msgc-stat/documents/reports/2017/2019MinnSentencingGuidelinesCommReportLegislature.pdf>.

[2]B. Criminal History

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- e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ten years has elapsed between the date of the initial sentence following the prior conviction and the date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

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2. **Change the word “section” to lowercase:** For consistency with Guidelines style, change the uppercase word “Section” to lowercase “section” in two places: § 2.B.2.e(4)(iv) and § 2.G.14.a(1).

- **Suggested Correction:** The suggested correction to appear in the 2019 Minn. Sentencing Guidelines appears, below; the language shown assumes proposed modification will be permitted to take effect.

[2]B. Criminal History

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- (4) The court may not, however, waive assignment of a custody status point or half-point if either the current offense or a custody status offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. As used within this paragraph, “custody status offense” means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above.

- (i) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of 8, 9, 10, or 11 on the Standard Grid;
- (ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166);
- (iii) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of D8 or D9 on the Drug Offender Grid;

- (iv) an offense listed in ~~Section~~ section 8, Severe Violent Offense List;
- (v) Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b));
- or
- (vi) an attempt or conspiracy to commit one of these offenses.

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[2]G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

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14. Second or Subsequent Severe Violent Offense.

a. The following definitions apply to this section:

- (1) A "severe violent offense" is an offense listed in ~~Section~~ section 8, Severe Violent Offense List. "Severe violent offense" includes attempt or conspiracy, and includes an equivalent felony from a jurisdiction other than Minnesota. A current offense is not a "severe violent offense" if section 2.E.4 (Mandatory Life Sentences) applies.

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