

From: [Reitz, Nate \(MSGC\)](#)
To: [Frank, Matthew](#)
Subject: RE: Question about Sentencing Guidelines Modification process
Date: Tuesday, September 10, 2019 5:17:00 PM

Thanks, Matt!

From: Frank, Matthew <Matthew.Frank@ag.state.mn.us>
Sent: Tuesday, September 10, 2019 5:15 PM
To: Reitz, Nate (MSGC)
Subject: RE: Question about Sentencing Guidelines Modification process

This message was sent securely from the Minnesota Attorney General's Office

Nate, we are taking a look into this and will get back to you as soon as we can
Thanks
Matt

From: Reitz, Nate (MSGC) [<mailto:nate.reitz@state.mn.us>]
Sent: Wednesday, September 04, 2019 4:14 PM
To: Frank, Matthew
Cc: Kelly Lyn Mitchell; Payne, Jill (MSGC)
Subject: Question about Sentencing Guidelines Modification process

Hello, Matt. I have a question for you regarding how the Commission modifies the Sentencing Guidelines. I'll try to verbalize it below, but the attached slide deck (draft) may assist you in understanding it also.

- Question: Is the following sequence legal?
 - 1/9/2020: Commission votes to approve modifications to offense severity levels, subject to legislative review and public hearing
 - **1/15/2020: Commission submits modifications to Legislature**
 - 5/18/2020: Legislature adjourns without blocking modifications
 - 6/15/2020: Commission publishes in State Register notice of public hearing on modifications
 - **7/16/2020: Public hearing on modifications**
 - 7/23/2020: Commission votes in favor of final adoption of modifications
 - 8/1/2020: Modified Sentencing Guidelines take effect
- Legal references:
 - Minn. Stat. § [244.09, subd. 11](#), provides that “Any modification which amends the Sentencing Guidelines grid, including severity levels and criminal history scores ... shall be submitted to the legislature by January 15 of any year in which the commission wishes to make the change and shall be effective on August 1 of that year, unless the legislature by law provides otherwise.”
 - [Minn. R. ch. 3000](#), which contains procedures that “govern the promulgation of the sentencing guidelines, including any modifications of severity levels and criminal history scores,” and which requires a public hearing before final adoption of Guidelines

modifications, is not explicit about when the public hearing must take place relative to submission of the modifications to the Legislature.

- Arguments against the legality of this sequence:
 - This process goes against past practice. MSGC has historically held the public hearing before deciding whether to submit such changes to the Legislature.
 - Modifications to severity levels must be submitted to the Legislature in January. Because a modification is not “modification” until it’s adopted by the Commission, *adoption must precede submission*. But, because amendments cannot be adopted until after the public hearing (Minn. R. 3000.0600), *the public hearing must precede adoption*. Therefore, the public hearing and subsequent adoption must both happen before January 15.
 - Minn. R. 3000.0600, subp. 3, apparently refers to amendments that must be submitted to the Legislature by January 15. In context, subp. 3 appears to refer to such amendments as “proposed amendments,” even after public hearing and final adoption by the Commission. This appears to imply that submission (“propos[al]”) to the Legislature is intended to occur after public hearing and final adoption.
- Arguments for the legality of this sequence:
 - The public hearing is not required in statute, only in rule, and Minn. R. ch. 3000 never requires the public hearing to occur before submission to the Legislature.
 - Minn. R. ch. 3000 requires the Commission to adopt a change twice: Once when it proposes the amendment, and once again when it finally adopts it. A public hearing need not precede adopted changes in the first category. By referring to changes submitted to the Legislature as “proposed modifications,” the last sentence of Minn. Stat. § 244.09, subd. 11, appears to be leaving room to classify modifications submitted to the Legislature in the first, pre-hearing category.
 - The rules and the statute are not rigid about terminology. The statute refers to modifications submitted to the Legislature alternately as “modifications” and “proposed modifications.” Likewise, the rule refers to these modifications both as “amendments” and “proposed amendments.” Contrary to the argument above, Minn. R. 3000.0600, subp. 3, uses the term “proposed amendments” to refer to amendments that have been finally adopted by the Commission that are *not* subject to Legislative review—it simply means that those amendments had been proposed by the Commission, and are now adopted.

Your answer to this question will tell us whether the Commission, if it wishes to resolve a problem this year, has three months to do so, or five. I hope you can help.

Thanks,

- Nate

Nathaniel J. Reitz | Executive Director
[Minnesota Sentencing Guidelines Commission](#)
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Review Timeline Options & Next Steps

September 12, 2019
 Staff Presentation
 Nate Reitz, MSGC Executive Director
mn.gov/sentencing-guidelines

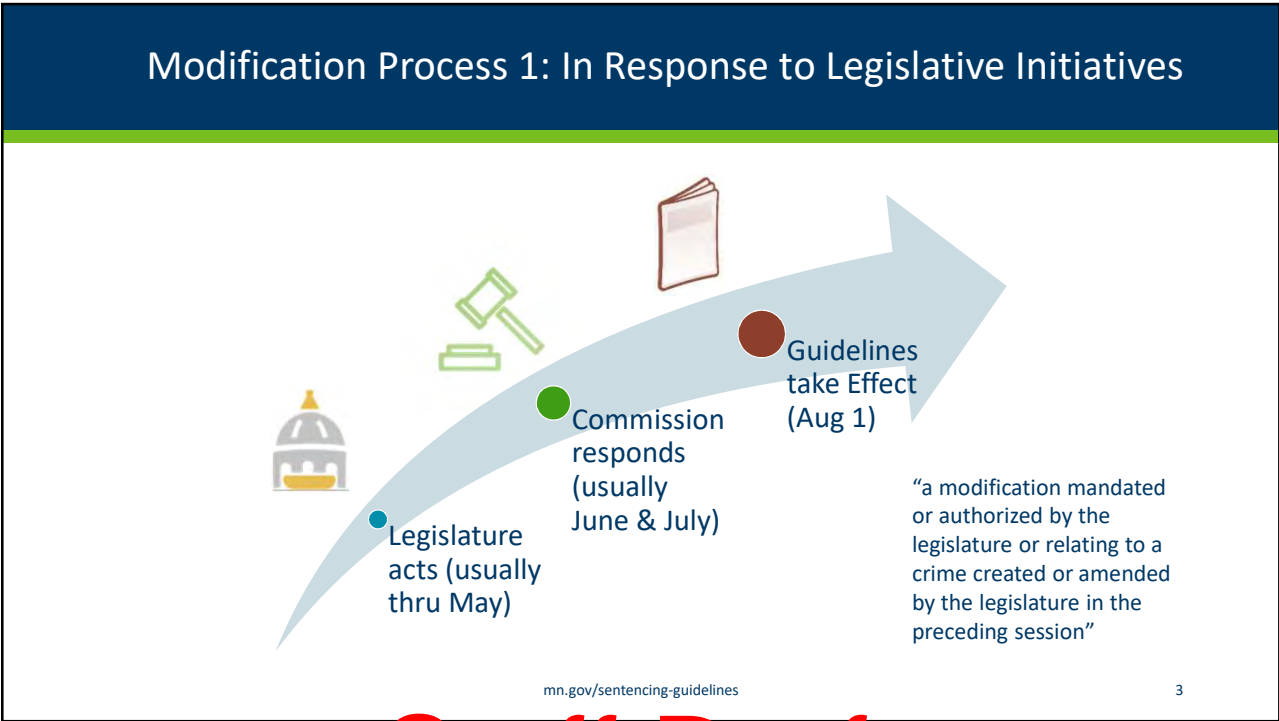
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Staff Draft (Not Presented)

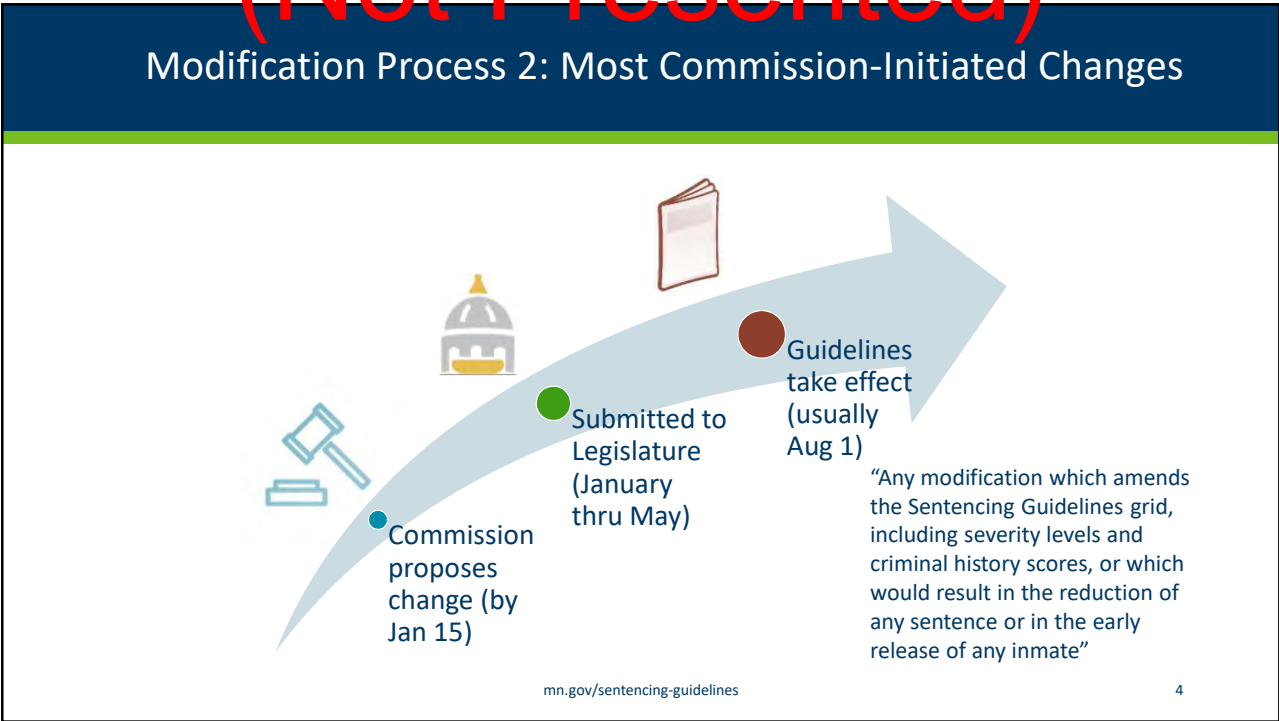
The mandate contains two tasks

SENTENCING GUIDELINES MODIFICATION.
 The Sentencing Guidelines Commission shall **comprehensively review** and **consider modifying** how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, sections 617.246 and 617.247, as compared to similar crimes, including other sex offenses and other offenses with similar maximum penalties.

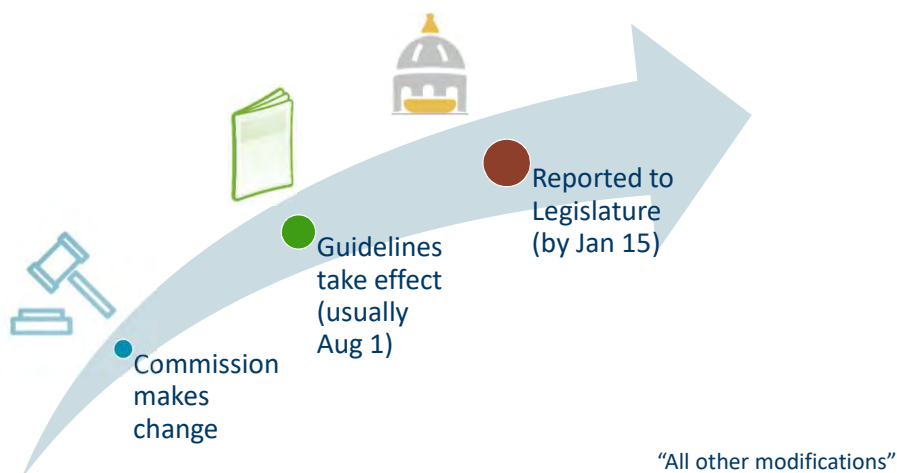
- **“Comprehensively review”**
- **“Consider modifying”**
- What is the process for modifying the Sentencing Guidelines?
 - Minn. Stat. § 244.09, subd. 11
 - Minn. Rules chapter 3000



Staff Draft
(Not Presented)



Modification Process 3: Some Commission-Initiated Changes



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Timing of Public Hearing

- A public hearing must occur—
 - **AFTER** amendments to the Guidelines are proposed [by the Commission]
 - **AT LEAST 30 DAYS AFTER** Commission's notice of intention to amend the Guidelines has been published in State Register
 - **AT LEAST 5 DAYS BEFORE** final adoption of the amendments to the Guidelines
- **BUT—**
 - I find no requirement that the public hearing must occur before proposed modifications are submitted to the Legislature



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What about recommendations for legislative change?

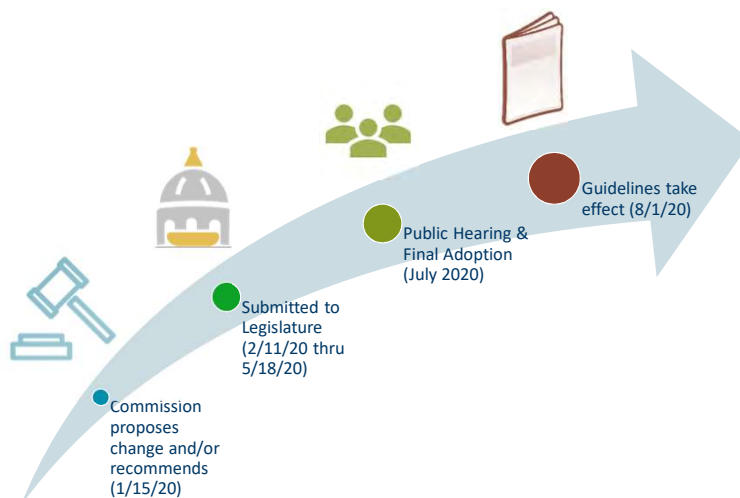
- “The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.”
—Minn. Stat. § 244.09, subd. 6.
- A standing duty, but not necessarily part of this mandate
- None of the timing and public hearing requirements apply to recommendations to the Legislature
- Legislative recommendations are commonly included in the required January Report to the Legislature

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Putting it together: One possible timeline for quick action



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Questions for discussion

- As part of this review, what would you like to learn more about?
- Whose voices would contribute to this review?
- What is the best process for conducting this review?
- What is a reasonable timeline to move from the “review” stage to the “consider modifying” stage (or will they happen simultaneously)?
- Is this mandate something that can reasonably be fulfilled this year?
- If not, is there an intermediate goal to accomplish and report on in January?

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**Staff Draft
(Not Presented)**