

Notice of Public Hearing

Proposed Amendments to the Minnesota Sentencing Guidelines and Commentary

Date of notice: June 15, 2020.

Date of hearing: July 16, 2020.

Refer to web site (mn.gov/sentencing-guidelines) for information on how to attend the public hearing

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, July 16, 2020, at 1:30 p.m. Information on how to attend the public hearing will be posted on the Commission's [web site](#).

The Commission will hold the record open for five calendar days after the public hearing to accept written comment.

On Thursday, July 23, 2020, the Commission will meet to finally adopt or reject the proposed modifications. Meeting information will be posted on the Commission's [web site](#).

All interested persons are encouraged to participate in the July 16 hearing and offer comments. Persons wishing to testify may register in advance; registration instructions will be posted on the Commission's [web site](#). If you require special accommodations to attend the public hearing, please contact the Minnesota Sentencing Guidelines Commission staff as soon as possible. This notice is available in alternative formats upon request. This notice was posted on the MSGC web site on June 15, 2020.

Proposed Modifications

The public hearing is being held to consider the following proposed modifications to the 2019 Minnesota Sentencing Guidelines and Commentary resulting from legislative action and non-legislative amendments.

Modifications are subject to final adoption after public hearing. Modifications will take effect August 1, 2020, and will apply to crimes committed on or after that date.

A. Legislative Amendments to Crime Laws Affecting the Guidelines

On June 11, 2020, the Commission reviewed felony offenses amended by the Minnesota Session Laws of the 2020 Regular Session. The Commission determined there were no new crimes created which would require modifications to the Guidelines. Specifically, the Commission considered amendments made to Harassment and Stalking in 2020 Minn. Laws [ch. 96](#), and made no modifications to the Guidelines as a result. There was one technical amendment in the Revisor’s Bill which required a technical change to Appendix 1. Subject to public hearing and final adoption, the changes are effective August 1, 2020, and apply to offenses on or after that date.

1. Amendments to Harassment and Stalking

2020 Minn. Laws [ch. 96](#)

[Chapter 96](#) of the 2020 Regular Session Laws amended the Harassment and Stalking statute. These revisions were considered by the Commission for possible modification to the Sentencing Guidelines.

Description: The Harassment and Stalking statute, Minn. Stat. § 609.749, was amended. Subdivisions 1 and 1a, which defined the term “harass” and relieved the prosecutor of the burden of proving specific intent to harass, were repealed. Subdivision 2 was amended, functionally replacing the repealed definition of “harass” with more limited elements and a new intent element, that the defendant must intend to kill, injure, harass, or intimidate the victim. The result is that either: that the victim must be placed in reasonable fear of substantial body harm to the victim or to members of the victim’s family or household; or that the result, the attempted result, or the reasonably expected result of the defendant’s behavior must be to cause substantial emotional distress to the victim. The eight enumerated ways by which one may harass another, also found in subdivision 2, were unchanged. Harassment remains a gross misdemeanor.*

The statutory maximums for the felony provisions in subdivisions 3, 4, and 5 were unchanged. The felony offenses in subdivision 3—Harassment (Aggravated Violations)—were changed only as follows:

- Subd. 3(a)(3) now requires the dangerous weapon to be used, not merely possessed.
- Subd. 3(a)(4) (involving harassment to tamper with a judicial proceeding) is no longer a standalone offense, but became an enhancement to subdivision 2 offenses (as all other felony Harassment offenses are).

* Not to be confused with civil harassment, which has a different definition. Civil harassment is not necessarily a crime, but may lead to the issuance of a restraining order, the violation of which is a crime. Minn. Stat. § [609.748](#).

In addition, all felony Harassment offenses were changed to the extent that they enhance subdivision 2 offenses, which were changed as described above. Stalking (subd. 5), on the other hand, remains a standalone offense with unchanged elements.

Similar changes were made to Minn. Stat. §§ 609.79 and 609.795, which define as misdemeanors harassing phone calls and mailings.

Proposed Modifications: None.

2. Citation for Criminal Vehicular Homicide in First Degree DWI

2020 Minn. Laws [ch. 83, art. 1, § 57](#)

[Chapter 83, art. 1, § 57](#) of the 2020 Regular Session Laws, the Revisor’s Bill, included technical amendments to Minn. Stat. § 169A.24, subd. 1, that affect Appendix 1 of the Guidelines.

Description: One of the ways a person is guilty of First-Degree Driving While Impaired (DWI) is if they have previously been convicted of felony Criminal Vehicular Homicide (CVH) or Criminal Vehicular Operation (CVO) under Minn. Stat. §§ 609.2112, 609.2113, or 609.2114. The “paragraph (a)” is missing for two references in Minn. Stat. § 169A.24, subd. 1(3)(iii). The law corrected the omission by inserting “paragraph (a)” in subd. 1(3)(iii) as displayed, below.

- CVH under Minn. Stat. § 609.2112, subd. 1, [paragraph \(a\)](#); and
- CVO; Unborn Child under Minn. Stat. § 609.2114, subd. 1, [paragraph \(a\)](#).

Guidelines Appendix 1 (Mandatory and Presumptive Sentences Reference Table) contains the same omission: For the above-mentioned CVH and CVO subdivisions, the Guidelines table is also missing the references to paragraph (a).

Proposed Modifications: Modify the “Prerequisite or Conditions” for this entry in Appendix 1 by inserting the missing paragraph “(a)” as follows.

Proposed modifications to 2019 Minn. Sentencing Guidelines Appendix 1:

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(a)(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(a)(2) thru (6); § 609.2114.2(2) thru (6)	Grid Time

* * *

B. Non-Legislative Amendments to Guidelines Commentary in Section 3.A

Description: As a result of action taken on April 9, 2020, the Commission proposes several amendments to the 2019 Minn. Sentencing Guidelines commentary in Guidelines section 3.A (Establishing Conditions of Stayed Sentences). These comment modifications conform to, and clarify the Commission’s intent with respect to, pending amendments to section 3.A that will allow for a presumptive probation term, subject to departure, of up to five years or the statutory maximum sentence, whichever is less, for most felony offenses. The comments are also reorganized and renumbered: Comment 3.A.102 is renumbered as comment “3.A.201,” and comments 3.A.201 and 3.A.202 are renumbered as comments “3.A.301” and “3.A.302.”

The proposed commentary modifications are shown below. Reorganization instructions are shown in brackets (e.g., “***[Comment 3.A.102. is moved below]***”). The pending 2020 amendments to section 3.A are shown without markup. To review those amendments, please refer to Appendix 2.3 of the Commission’s [2020 Report to the Legislature](#).

Proposed modifications to 2019 Minn. Sentencing Guidelines § 3.A commentary, with pending 2020 amendments to § 3.A shown:

3. Related Policies

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the court orders a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must pronounce the length of the stay as provided in section 3.A.2 and may establish appropriate conditions subject to the considerations in section 3.A.3.
 - a. Stay of Execution. When ordering a stay of execution, the court must pronounce the prison sentence duration, but its execution is stayed. The presumptive duration is shown in the appropriate cell.
 - b. Stay of Imposition. When ordering a stay of imposition, the court must not pronounce a prison sentence duration, and the imposition of the sentence is stayed.

The Commission recommends that stays of imposition be used for offenders who are convicted of lower severity offenses and who have low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

Comment

3.A.101. *The use of either a stay of imposition or stay of execution is at the discretion of the court. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and should be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, courts use stays of imposition most frequently for these types of offenders.*

*****[Comment 3.A.102. is moved below]*****

2. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.
- b. Subject to the limitation in section 3.A.2.a, the pronounced length of stay may exceed the presumptive prison sentence duration provided in the appropriate cell on the applicable Grid.
- c. If the court by departure exceeds the limitation in section 3.A.2.a, the length of stay must not exceed the statutory maximum punishment for the offense.
- d. The limitation in section 3.A.2.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 609.2662 (Murder of an Unborn Child 2nd Degree), 609.2663 (Murder of an Unborn Child 3rd Degree), 609.2664 (Manslaughter of an Unborn Child 1st Degree), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 609.342 (Criminal Sexual Conduct 1st Degree), 609.343 (Criminal Sexual Conduct 2nd Degree), 609.344 (Criminal Sexual Conduct 3rd Degree), 609.345 (Criminal Sexual Conduct 4th Degree), or 609.3451 (Criminal Sexual Conduct 5th Degree).
- e. Extensions of probation are governed by statute (see Minn. Stat. § 609.135, subd. 2(g)–(h)).

Comment

*****[The following comment is moved from above]*****

~~3.A.102.~~ 3.A.201. *When a court grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell on the applicable Grid, and may be as long as the statutory maximum punishment for the conviction offense. See Minn. Stat. § 609.135, subd. 2. Absent substantial and compelling reasons to depart, however, the length of the stay may not exceed five years, unless the current offense is a homicide or criminal sexual conduct offense, including an attempt or conspiracy. Thus, for an offender convicted of Theft over \$5,000 (Severity Level 3), with a*

Criminal History Score of 1, the duration of the stay could be up to five years—or, upon a finding of substantial and compelling reasons to depart, up to ten years. ~~The~~ Regardless of the length of stay, the 13-month sentence shown in the Guidelines is the presumptive sentence length and, if imposed, would be executed if: (a) the court departs from the dispositional recommendation and decides to execute the sentence; or (b) the stay is later revoked and the court decides to imprison the offender.

3.A.202. *Before section 3.A.2.a took effect, case law required durational departures to be based on the nature of the offense rather than on the individual characteristics of the offender. See State v. Solberg, 882 N.W.2d 618, 625 (Minn. 2016). Although a pronounced length of stay longer than provided in section 3.A.2 is defined as an aggravated durational departure, the Commission recognizes that judicial considerations for pronouncing a longer-than-recommended length of stay may differ substantially from considerations for imposing a longer-than-recommended prison duration. As a result of these differences, the individual characteristics of the offender may be relevant to the district court's finding of substantial and compelling reasons justifying a longer-than-recommended length of stay.*

3.A.203. *Within section 3.A.2, "statutory maximum punishment" refers to the applicable maximum period for a stay of sentence established in statute. For most felonies, this is the maximum period for which the sentence of imprisonment might have been imposed, but, for some felonies, this is four or six years. Minn. Stat § 609.135, subd. 2(a)–(b).*

3. Other Conditions of Stayed Sentences. While the Commission has otherwise chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

- deterrence;
- public condemnation of criminal conduct;
- public safety;
- rehabilitation;
- restitution;
- retribution; and
- risk reduction.

The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The Commission urges courts to utilize the least restrictive conditions of

stayed sentences that are consistent with the objectives of the sanction. The Commission further urges courts to consider the following principles in establishing the conditions of stayed sentences:

- (1) Retribution. If retribution is an important objective of the stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender. A period of confinement in a local jail or correctional facility may be appropriate.
- (2) Rehabilitation. If rehabilitation is an important objective of the stayed sentence, the court should make full use of available local programs and resources. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds.
- (3) Restitution. The Commission urges courts to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for offenders with short criminal histories who are convicted of property crimes, although the use of these conditions in other cases may be appropriate.
- (4) Supervision. Supervised probation should be a primary condition of stayed sentences.
- (5) Fines. If fines are imposed, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.
- (6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.

Comment

3.A.201-3.A.301. *The court may attach any conditions to a stayed sentence that are permitted by law and that the court deems appropriate. The Guidelines neither enlarge nor restrict the conditions that courts may attach to a stayed sentence. Minn. Stat. § 244.09, subd. 5 permits, but does not require, the*

Commission to establish guidelines covering conditions of stayed sentences. The Commission ~~chose not to develop~~ has developed such guidelines during its initial guideline development effort. The Commission has ~~provided some language in the above section of the Guidelines that provides~~ with respect to the pronounced length of stay in section 3.A.2, and has provided additional, general direction in the use of conditions of stayed sentences in the above section.

~~3.A.202-3.A.302.~~ 3.A.302. *While the Commission has ~~resolved not to develop~~ otherwise not developed guidelines for nonimprisonment sanctions ~~at this time~~, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.*