

Minnesota Sentencing Guidelines Commission

Severe Violent Offender Sentencing Proposal November 17, 2016

Proposal: Increase the weights assigned to offenses defined as severe violent crimes if the current offense is a severe violent crime. Each prior severe violent crime would receive a weight of 3, instead of the 1, 1.5, or 2 points it currently receives. Table 1 displays the offenses designated as severe violent crimes, their current statutory maximums, severity level rankings, and criminal history weights.

Table 1: Proposed Severe Violent Crimes

Statute	Offense Description	Stat. Max.	Severity Level	History Weight
609.185	Murder 1 (attempts or conspiracies)	20 yrs.	Off-Grid	2
609.19, subd. 1	Murder 2-Intentional or by a drive-by	40 yrs.	11	2
609.19, subd. 2	Murder 2-Unintentional	40 yrs.	10	2
609.195 (a)	Murder 3-eminently dangerous act and evincing depraved mind	25 yrs.	10	2
609.195 (b)	Murder 3-unintentional through distribution schedule I,II	25 yrs.	9	2
609.20 (1) (2) (5)	Manslaughter 1-heat of passion; committing M/GM 5 th degree assault; malicious punishment of a child	15 yrs.	9	2
609.20 (3) (4)	Manslaughter 1- intentional while coerced; distribute schedule III,IV,V	15 yrs.	8	1.5
609.205 (1) (5)	Manslaughter 2-culpable negligence; through child neglect/endangerment	10 yrs.	8	1.5
609.205 (2) (3) (4)	Manslaughter 2-hunting accident; fail control dangerous animal	10 yrs.	5	1
609.221	Assault 1-great bodily harm	20 yrs.	9	2
609.222-subd. 1	Assault 2-dangerous weapon	7 yrs.	6	1.5
609.222-subd. 2	Assault 2-dangerous weapon and substantial bodily harm	10 yrs.	6	1.5
609.223, subd. 3	Assault 3-Bodily Harm, Victim under 4	5 yrs.	4	1
609.245, subd. 1	Aggravated Robbery 1 st degree-weapon/fake weapon/bodily harm	20 yrs.	8	1.5
609.245, subd. 2	Aggravated Robbery 2 nd degree-implies a weapon	15 yrs.	6	1.5
609.66, subd. 1e	Drive-By Shooting- at person, occupied building/motor vehicle	10 yrs.	8	1.5
609.855, subd. 5	Shooting at Occupied Transit Vehicle	5 yrs.	6	1.5

A. Frequency of Severe Violent Crimes

Since 2011, the offenses designated as severe violent crimes have comprised approximately five percent of the offenses sentenced each year. Table 2 displays how often the offenses have been sentenced in each of the last five years. Table 3 displays how often each of the proposed severe violent crimes have been sentenced in the last five years. Attempted offenses are included. First-degree murder includes only attempts and conspiracies since completed offenses have a mandatory life sentence.

Table 2. Number of Severe Violent Crimes Sentenced: 2011-2015

Sentence Year	Number of Cases	Severe Violent Crime			
		No		Yes	
2011	14,571	13,901	95.4%	670	4.6%
2012	15,207	14,429	94.9%	778	5.1%
2013	15,318	14,547	95.0%	771	5.0%
2014	16,145	15,388	95.3%	757	4.7%
2015	16,763	16,003	95.5%	760	4.5%
Total	78,004	74,268	95.2%	3,736	4.8%

Table 3: Proposed Severe Violent Crimes Sentenced 2011-2015

Statute	Offense Description	2011-2015 Cases	
		Number	Percent
609.185	Murder 1 (only attempts or conspiracies)	42	0.1%
609.19	Murder 2	285	0.4%
609.195	Murder 3	21	<0.1%
609.20	Manslaughter 1	19	<0.1%
609.205	Manslaughter 2	40	0.1%
609.221	Assault 1	334	0.4%
609.222	Assault 2	1,662	2.1%
609.223, subd. 3	Assault 3-Bodily Harm, Victim under 4	32	<0.1%
609.245, subd. 1	Aggravated Robbery 1 st degree	1,045	1.3%
609.245, subd. 2	Aggravated Robbery 2 nd degree	188	0.2%
609.66, subd. 1e	Drive-By Shooting at Occupied Entity	66	0.1%
609.855, subd. 5	Shooting at Occupied Transit Vehicle	2	0%
Total		3,736	4.8%

B. Number of Severe Violent Crimes with a Severe Violent Prior Offense

In 2015, 760 offenders were sentenced for one of the severe violent crimes and 20 percent had a prior severe violent crime. Table 4 displays the number of offenders sentenced for a severe violent offense in 2015 as well as the number that had a severe violent offense in their criminal history.

Table 4: 2015 Severe Violent Crimes with a Prior Severe Violent Offense

Statute	Offense Description	2015 Cases		
		Number SVC	With Prior SVC	
			Number	Percent
609.185	Murder 1	17	8	47%
609.19	Murder 2	50	12	24%
609.195	Murder 3	7	0	0
609.20	Manslaughter 1	7	2	29%
609.205	Manslaughter 2	7	0	0%
609.221	Assault 1	68	12	18%
609.222	Assault 2	325	46	14%
609.223, subd. 3	Assault 3-Bodily Harm, Victim under 4	6	0	0%
609.245, subd. 1	Aggravated Robbery 1 st degree	220	57	26%
609.245, subd. 2	Aggravated Robbery 2 nd degree	43	9	21%
609.66, subd. 1e	Drive-By Shooting at Occupied Entity	10	3	30%
609.855, subd. 5	Shooting at Occupied Transit Vehicle	0	---	---
Total		760	149	20%

C. Number of Severe Violent Offenders Whose Presumptive Sentence Would Not Increase Due to Their Existing Criminal History Score

Increasing the weights assigned to prior severe violent crimes would result in longer presumptive sentences only if the offender’s criminal history score is less than six. If an offender already has a criminal history score of six or more, the increase in the weights assigned to prior severe violent crimes would not result in an increase to the presumptive duration. Some of these offenders have criminal history scores of six or more because they were sentenced for multiple current severe violent crimes. Table 5 displays the number of offenders sentenced for each offense who had a prior severe violent crime by whether their criminal history score was already at six or more.

Table 5: 2015 Severe Violent Offenses with a Prior Severe Violent Offense Number with Criminal History Scores of Six or More

Statute	Offense Description	2015 Cases		
		Number	History < 6	History 6 +
609.185	Murder 1	8	5	3
609.19	Murder 2	12	12	0
609.20	Manslaughter 1	2	1	1
609.221	Assault 1	12	9	3
609.222	Assault 2	46	36	10
609.245, subd. 1	Ag. Robbery 1 st degree	57	47	10
609.245, subd. 2	Ag. Robbery 2 nd degree	9	4	5
609.66, subd. 1e	Drive-By Shooting	3	2	0
Total		149	117	32 (22%)

D. Current Sentencing Practices for Severe Violent Offenders with a Prior Severe Violent Crime

Of the 149 offenders sentenced for a severe violent crime in 2015 who had a prior severe violent offense, all but one (second degree aggravated robbery) had a presumptive prison disposition. The overall mitigated dispositional departure rate was 18 percent (got probation instead of prison). Table 6 displays the prison rates for those offenses as well as the durational departure rates for those offenders who received a prison sentence.

Table 6: Sentencing Practices for 2015 Severe Violent Offenders with a Prior Severe Violent Crime

Statute	Offense Description	2015 Cases			
		Number w/ Prior SVC	Received Prison	Mitigated Durational Departure	Aggravated Durational Departure
609.185	Murder 1	8	8-100%	0	1-13%
609.19	Murder 2	12	12-100%	1-8%	2-17%
609.20	Manslaughter 1	2	2-100%	2-100%	0
609.221	Assault 1	12	12-100%	1-8%	0
609.222	Assault 2	46	34-74%	6-18%	2-6%
609.245, subd. 1	Ag. Robbery 1 st degree	57	46-81%	21-46%	0
609.245, subd. 2	Ag. Robbery 2 nd degree	9	4-44%	0	1-25%
609.66, subd. 1e	Drive-By Shooting	3	3-100%	0	0
Total		149	121-81%	31 (26%)	6 (5%)

E. Estimated Prison Bed Impact by Offense

Table 6 displays the estimated prison bed impact for the proposal based on offenders sentenced in 2015 who received prison sentences. Of the 149 offenders sentenced in 2015 who had a prior severe violent crime, 28 (19%) did not receive a prison sentence and they are excluded from the bed estimates. The following assumptions were used in making these calculations:

1. If the offender received a sentence at the top or bottom of the range, they would receive a sentence at the top or bottom of their new range after their presumptive sentence was recalculated
2. There would be no change to the total pronounced sentence under the following circumstances:
 - Consecutive Sentences-6 offenders
 - Aggravated Durational Departure-6 offenders
 - Mitigated Duration- 31 offenders

In total 68 of the 121 offenders who received prison sentences (56%) would see no change to their sentences because they fit into one of the above categories or there was no increase to their criminal history score because they already had a criminal history score of 6 or more.

**Table 6: Estimated Prison Impact by Offense and Type of Change to Sentence
Severe Violent Offenders who Received a Prison Sentence**

Statute	Offense Description	Change to Sentence			Prison Beds
		Number	None	Increase	
609.185	Murder 1	8	6	2	1.5
609.19	Murder 2	12	5	7	10
609.20	Manslaughter 1	1	1	0	0
609.221	Assault 1	12	6	6	9
609.222	Assault 2	34	14	20	8
609.245, subd. 1	Ag. Robbery 1 st degree	46	30	16	15
609.245, subd. 2	Ag. Robbery 2 nd degree	4	4	0	0
609.66, subd. 1e	Drive-By Shooting	3	1	2	1
Total		121	68	53	45