

Proposed Modifications to the Sentencing Guidelines and Commentary, Effective August 1, 2018

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, July 19, 2018, at 1:30 p.m. in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155. The public hearing is being held to consider proposed modifications to the Minnesota Sentencing Guidelines and Commentary resulting from Legislative amendments, non-legislative amendments, and technical corrections.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission's office at the below address or telephone number, or by e-mail at sentencing.guidelines@state.mn.us. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request.

The Commission will hold the record open for five calendar days after the public hearing to accept written comment. On Thursday, July 26, 2018, the Commission will meet at 1:30 p.m. in Room 1100 of the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155, to formally adopt or reject the proposed modifications. If adopted, modifications become effective August 1, 2018.

A. New Crime Law Affecting the Guidelines

The Commission reviewed new and amended crime laws in the 2018 Regular Session, and proposes to assign a Severity Level 2 to the new offense of Unauthorized Computer Access (Electronic Terminal); to add that offense to the list of Offenses Eligible for Permissive Consecutive Sentences; and to make resulting technical modifications, as follows. (2017 Minn. Sentencing Guidelines §§ 5.A, 5.B, and 6; 2018 Minn. Laws ch. 123.)

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
2	<u>Unauthorized Computer Access (Electronic Terminal)</u>	<u>609.891, subd. 2(c)</u>

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Unauthorized Computer Access (Grave Risk or Subsequent)</u>	<u>609.891, subd. 2(a) & (b)</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.891, subd. 2(a) & (b)</u>	<u>Unauthorized Computer Access (Grave Risk or Subsequent)</u>	Unranked
<u>609.891, subd. 2(c)</u>	<u>Unauthorized Computer Access (Electronic Terminal)</u>	<u>2</u>

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
<u>609.891, subd. 2(c)</u>	<u>Unauthorized Computer Access (Electronic Terminal)</u>

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B. Technical Amendment to Crime Law Affecting the Guidelines

The Commission reviewed new and amended crime laws in the 2018 Regular Session, and proposes making resulting technical modifications to references to Minn. Stat. § 152.021, subd. 2a, as follows. (2017 Minn. Sentencing Guidelines §§ 5.A, 5.B, and 6; 2018 Minn. Laws ch. 182, art. 1 § 39.)

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
D9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	D9

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Section 6. Offenses Eligible for Permissive Consecutive Sentences

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Statute Number	Offense Title
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine

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C. Non-legislative Modification

At its October 12 and November 9, 2017, meetings, the Commission adopted motions to forward to public hearing three proposed modifications to the Guidelines. These proposed modifications were published in the Commission's January 12, 2018, *Report to the Legislature*.

- 1. Statement of Purpose and Principles:** The Commission proposes making non-legislative modifications to the Statement of Purpose and Principles to incorporate the requirements of Minn. Stat. § 244.09, subd. 5. In its current form, that subdivision requires that, when establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. (2017 Minn. Sentencing Guidelines § 1.A; 2016 Minn. Stat. § 244.09.) The proposed modifications follow.

Section 1.A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history. ~~Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant sentencing criteria substantially different from a typical case should receive different sanctions.~~

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.
- ~~2.~~2. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
- ~~2.~~3. The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.
- ~~3.~~4. Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.
- ~~4.~~5. Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
- ~~5.~~6. Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated.

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2. **Felony Escape from Electronic Home Monitoring:** The Commission proposes making a non-legislative modification to explicitly designate Escape from Electronic Home Monitoring under Minn. Stat. § 609.485, subd. 4(f), as an “unranked” offense, as follows. (2017 Minn. Sentencing Guidelines §§ 5.A and 5.B.)

Section 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Escape from Electronic Home Monitoring</u>	<u>609.485, subd. 4(f)</u>

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Section 5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.485, subd. 4(f)</u>	<u>Escape from Electronic Home Monitoring</u>	<u>Unranked</u>

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3. **Offenses Involving a Dangerous Weapon; Application of Mandatory Sentences:** The Commission proposes a non-legislative modification to Comment 2.E.03 by correcting the list of offenses that, by definition, involve the use or possession of a firearm, or the use of another dangerous Weapon, as follows. (2017 Minn. Sentencing Guidelines § 2.E, Comment 2.E.03.)

Section 2.E. Mandatory Sentences

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2.E.03. *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minn. Stat. § 152.021, subd. 2b(1); Controlled Substance Crime in the First or Second Degree with*

a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66;~~and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3).~~ The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer.

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