

Sentencing Guidelines Neutrality Review

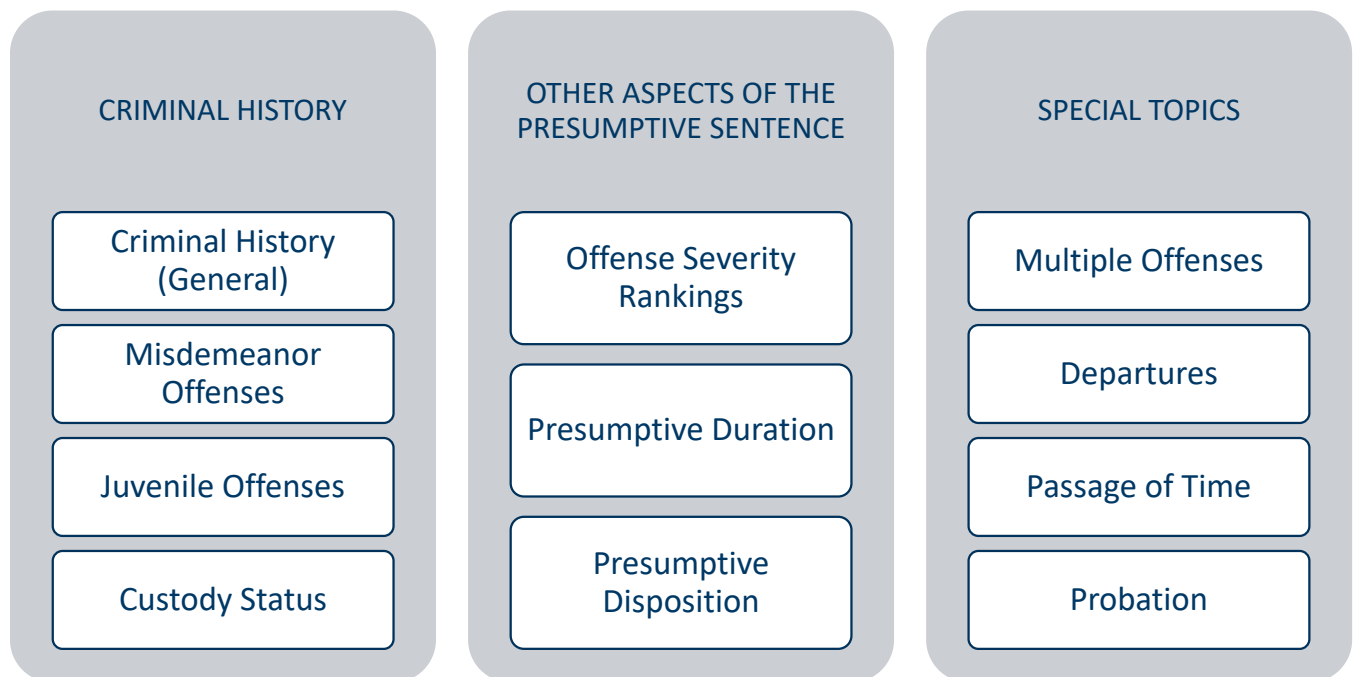
Sentencing Guidelines Policy Groups

January 28, 2021

At its November 5, 2020, meeting, the Commission reviewed a staff [inventory](#) of 192 policies contained within sections 2 and 3 of the Sentencing Guidelines. Staff’s intent in preparing this inventory was to provide a starting point for the Commission’s prioritization of research efforts needed for its upcoming review of the Sentencing Guidelines for conformity with the Commission’s policy on neutrality, with an emphasis on impact by race.

To bring the “multitude of policies” presented in November into clearer focus, this staff paper attempts to group similar policies together, presenting the 192 policies within eleven **policy groups**, an overview of which is shown in Figure 1.

Figure 1. Overview of Policy Groups, Minnesota Sentencing Guidelines.



The entire policy inventory is again presented (Table 1, beginning on page 5), but with a new column displaying the three-letter code signifying the policy group to which each policy belongs. (Some policies belong to two groups.)

This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

As a starting point for its neutrality review, the Commission may wish to consider focusing its limited research resources on a small number of these policy groups.

Policy Groups Pertaining to Criminal History

Four of the eleven policy groups pertain to criminal history.

CHS: Criminal History in General

The policies in this group reflect the impact that past behavior has on the current presumptive sentence. Included are those policies that deal with criminal history in general (*e.g.*, Policy 6, the horizontal axis of the sentencing grids is the criminal history score) as well as those that particularly pertain to prior felonies in criminal history (*e.g.*, Policy 12, vary weights by prior offense severity).

MSD: Misdemeanor Offenses

The policies in this group reflect the Commission’s treatment of misdemeanor offenses. Chiefly, these policies govern the extent to which past misdemeanor offenses are to be used in sentencing a current felony offense (*e.g.*, Policy 51, only a targeted misdemeanor contributes a misdemeanor unit), although this is not exclusively so (*i.e.*, Policy 102, classifying the sentencing of a felony within misdemeanor limits as a mitigated durational departure).

JUV: Juvenile Offenses

This policy group reflects the Commission’s treatment of juvenile offenses. Chiefly, these policies govern the extent to which past juvenile offense are to be used in sentencing a current adult offense (*e.g.*, Policy 64, assign one point per two prior juvenile adjudications), although this is not exclusively so (*e.g.*, Policy 188, the Guidelines apply when juveniles are certified as adults).

CSP: Custody Status

Although included within the “criminal history” score, the policies in this group do not directly pertain to a person’s past criminal history. Instead, these policies are concerned with a consequence of that criminal history—the person’s status within the correctional system at the time of the offense. Examples of policies within this group include Policy 31, count probation as custody, and Policy 30, vary custody weights by prior offense severity.

Policy Groups Pertaining to Other Aspects of the Presumptive Sentence

In addition to criminal history, three other policy groups are directly concerned with the presumptive sentence.

SEV: Offense Severity Rankings

The policies in this group pertain to the vertical axes of the sentencing grids, which is the Commission-assigned severity of the current offense. While the number of policies in this group is small, recall that the policy inventory was limited to sections 2 and 3 of the Guidelines. If each ranking decision reflected in Guidelines section 5 is deemed a “policy,” then several hundred additional policies are included within this group.

DUR: Presumptive Duration

The policies in this group bear directly on the presumptive prison duration. They range from rules that apply broadly (*e.g.*, Policy 140, if a mandatory minimum applies, the presumptive duration is the greater of the grid time or the mandatory minimum) to rules that apply narrowly (*e.g.*, Policy 178, increasing the presumptive duration by 12 months for a felony committed for the benefit of a gang). Although not included in Table 1 (the policy inventory), the various sentence durations displayed in Guidelines section 4—*i.e.*, all the numbers in the three sentencing grids—may be deemed to be policies included within this group.

DSP: Presumptive Disposition

This policy group concerns the prison disposition recommended by the Guidelines—the heart of the Commission’s mandate to establish “the circumstances under which imprisonment of an offender is proper,” Minn. Stat. § 244.09. Like durational policies, these policies also may apply broadly (*e.g.*, Policy 139, presuming commitment for an attempt when a statute prescribes a mandatory minimum of more than one year for the completed offense) or narrowly (*e.g.*, Policy 93, presuming commitment for a repeat burglar who burglarizes an occupied dwelling). As with duration, the shading or non-shading of each cell on the sentencing grids—and the placement of the disposition line between the shaded and non-shaded areas—may be considered to be policies within this group.

Policy Groups Covering Special Topics

Like the policies presented above, several of the policies in the final four policy groups also bear on the presumptive sentence. They are nevertheless presented separately because their issues are given special treatment by the Sentencing Guidelines.

MLT: Multiple Offenses

The policies in this group create sentencing rules when multiple offenses are involved. Examples include Policy 11, which counts felonies as prior even if committed after the current offense; Policy 21, which permits including each current felony in the criminal history of subsequently sentenced felonies (“Hernandizing”); and policies 149–167, which establish rules for consecutive and concurrent sentencing.

DEP: Departures

The focus of this policy group is the regulation of when, and how, courts may depart from the sentences recommended by the Sentencing Guidelines—although, as Guidelines section 2.D.1 states, “A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.” Many of the policies in this group are found in Guidelines section 2.D.3, the nonexclusive list of factors that may be used as reasons for departure.

TIM: Passage of Time

The policies in this group are responsive to changes that occur over time; they establish how the presumptive sentence—and the Guidelines themselves—should change with them. Included within this policy group are rules concerning how long a past offense remains relevant for purposes of criminal history before it “decays” (*e.g.*, Policy 14), how prior offenses are classified in criminal history when the statutory offense definitions change (*e.g.*, Policy 82), and whether Guidelines changes should be only prospective (Policy 192).

PRB: Probation

This policy group looks beyond the prison disposition and duration to the conditions of stayed sentences. These six policies range from general recommendations regarding revocation of stayed sentences (Policy 186) to specific guidelines regarding the duration of stayed sentences for most offenses (Policy 184).

Table 1. Sentencing Guidelines Policy Inventory, with Policy Groups.

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
1	2	Offense date is earliest date of aggregated offenses	Would using a later offense date have a more neutral effect?	—		MLT, TIM
2	2.A.1, 2.C.1	Presumptive sentences derive from offense severity, found in § 5.A	Do current offense rankings have a neutral effect? Would increasing or decreasing their contribution to the presumptive sentence have a more neutral effect?	Related to	244.09, subd. 5	SEV
3	2.A.1	The offense severity is that of the conviction offense, not the charging offense	Would using a measure of “offense characteristics” less under control of the prosecutor have a more neutral effect?	Related to	244.09, subd. 5	SEV
4	2.A.2	Theft creating risk of bodily harm increases SL +1	Does this policy have a neutral effect?	Related to	609.52, subd. 3a	SEV
5	2.A.4	Unranked offenses are ranked by court	Do court rankings of unranked offenses have a neutral effect?	—		SEV
6	2.B, 2.C.1	Presumptive sentences derive from criminal history, the horizontal axis of the Grids	Does criminal history have a neutral effect? Would increasing or decreasing its contribution to the presumptive sentence have a more neutral effect?	Related to	244.09, subd. 5	CHS
7	2.B.03	Count offenses with expunged records in criminal history	Would excluding expunged offenses from criminal history have a more neutral effect?	Reflective of	609A.03, subd. 7a(b)	CHS
8	2.B.1	Include prior felonies in criminal history	Would excluding prior felonies from criminal history—e.g., using another measure of “offender characteristics” less under the control of past prosecutors—have a more neutral effect?	Related to	244.09, subd. 5	CHS
9	2.B.1	Count EJJ convictions as prior felonies	Would excluding EJJ convictions, or counting them as prior juvenile adjudications, have a more neutral effect?	Required by	260B.245, subd. 1	JUV
10	2.B.1	Count stay-of-imposition misdemeanors as prior felonies	Would excluding stay-of-imposition misdemeanors from prior felonies have a more neutral effect?	Related to	609.13, subd. 1(2) & 3	MSD

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
11	2.B.1	Count felonies as prior even if committed after current offense	Would limiting prior offenses to those committed before current offense have a more neutral effect?	—		MLT
12	2.B.1.a & b	Vary weights by prior offense severity	Do offense weights have a neutral effect?	—		CHS
13	2.B.1.b	Weigh offenses differently for sex offender grid	Does this policy have a neutral effect?	—		CHS
14	2.B.1.c	A prior felony decays after time	Would it have a more neutral effect have a more neutral effect if prior offenses never decayed?	—		TIM
15	2.B.1.c(1)	A prior felony cannot decay before expiration or discharge	Does this policy have a neutral effect?	—		TIM
16	2.B.1.c(2) & (3)	The felony decay period is 15 years	Would a different decay period have a more neutral effect?	—		TIM
17	2.B.1.c(2) & (3)	The decay start time varies by whether the prior sentence was executed	Does this policy have a neutral effect?	—		TIM
18	2.B.1.d(1)	Use only one prior per course of conduct when multiple sentences were permitted under 152.137, 609.585, or 609.251	Would always using only one prior per course of conduct have a more neutral effect?	Related to	609.035 et al.	MLT
19	2.B.1.d(1)	Use all priors from same course of conduct when multiple sentences were permitted under other statutes	Would always using all priors from same course of conduct have a more neutral effect?	Related to	609.035 et al.	MLT
20	2.B.1.d(2)	Use only two priors per course of conduct involving multiple victims	Would using only one prior, or all priors, have a more neutral effect?	Related to	609.035 et al.	MLT
21	2.B.1.e	Include each current felony in the criminal history of subsequently sentenced current felonies (“Hernandizing”)	Would sentencing only the most serious current offense have a more neutral effect?	—		MLT
22	2.B.1.e(1)	Don’t Hernandize single-course-of-conduct offense when 152.137, 609.585, or 609.251 permits multiple sentences	Would never Hernandizing single courses of conduct have a more neutral effect?	Related to	609.035 et al.	MLT
23	2.B.109	Do Hernandize single-course-of-conduct offenses when other statutes permit multiple sentences	Would always Hernandizing single courses of conduct have a more neutral effect?	Related to	609.035 et al.	MLT

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
24	2.B.1.e(2)	Hernandize only two offenses per course of conduct involving multiple victims	Would Hernandizing only one offense, or all offenses, have a more neutral effect?	Related to	609.035 et al.	MLT
25	2.B.1.f	Weigh prior attempts and conspiracies the same as the underlying offense	Would reducing the weight of attempts & conspiracies have a more neutral effect?	—		CHS
26	2.B.1.g	Assign no weight to a stay of adjudication or continuance for dismissal	Does this policy have a neutral effect?	—		CHS
27	2.B.1.h & 2.B.3.a(6)	Treat prior felonies as gross misdemeanors or misdemeanors if sentenced within those limits	Would treating these offenses as felonies have a more neutral effect?	Related to	609.13, subd. 2 & 3	MSD
28	2.B.1.i	Round down felony points	Would rounding up felony points have a more neutral effect?	—		CHS
29	2.B.2	Include custody status in criminal history	Would excluding custody status from criminal history have a more neutral effect?	—		CSP
30	2.B.2.a	Vary custody weights by prior offense severity	Would greater, or less, variation in custody weights have a more neutral effect?	—		CSP
31	2.B.2.a(1)(i)	Count probation as custody	Would not counting probation, or counting less probation, have a more neutral effect?	—		CSP
32	2.B.2.a(1)(ii) & (iii)	Count parole & supervised release as custody	Would not counting parole or supervised release have a more neutral effect?	—		CSP
33	2.B.2.a(1)(iv)	Count post-prison conditional release as custody	Would not counting conditional release, or counting less conditional release, have a more neutral effect?	—		CSP
34	2.B.2.a(1)(v)	Count presentence release as custody	Would not counting presentence release have a more neutral effect?	—		CSP
35	2.B.2.a(1)(vi)	Count presentence confinement as custody	Would not counting presentence confinement have a more neutral effect?	—		CSP
36	2.B.2.a(1)(v)	Count escape from confinement after an executed sentence as custody	Would not counting escape, or counting escape from non-executed sentence, have a more neutral effect?	—		CSP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
37	2.B.2.a(2)	Require a conviction for custody status	Would including pretrial custody have a more neutral effect? Or limiting custody to post-sentence only?	—		CSP
38	2.B.2.a(3)(iii)	Count custody status for EJJ conviction	Would not counting EJJ custody status have a more neutral effect?	—		JUV, CSP
39	2.B.2.a(3)(iv) & (v)	Count custody status for gross misdemeanor, except non-DWI traffic gross misdemeanor	Would counting status for no, or all, gross misdemeanors have a more neutral effect?	—		MSD, CSP
40	2.B.2.a(3)(vi)	Count custody status for targeted misdemeanor	Would counting status for no, or all, misdemeanors have a more neutral effect?	—		MSD, CSP
41	2.B.2.a(4)	Count custody status if it ever applied during a current offense that was committed over time	Would requiring custody status to encompass the entire current offense date range have a more neutral effect?	—		CSP, TIM
42	2.B.2.b	Assign two custody status points if current and custody offenses were sex offenses other than failure to register	Does this policy have a neutral effect?	—		CSP
43	2.B.2.c	Bump presumptive sentence 3 months for criminal history score of 7 or more that includes custody status	Does this policy have a neutral effect?	—		CSP
44	2.B.2.d(1)	Exclude custody status for mental health treatment or examination	Does this policy have a neutral effect?	—		CSP
45	2.B.2.d(2) & (3)	Exclude juvenile custody status except EJJ convictions	Would including other juvenile custody have a more neutral effect?	—		JUV, CSP
46	2.B.2.e	Permit custody status waiver under certain circumstances	Does this policy have a neutral effect?	—		CSP, DEP
47	2.B.2.e(4)	Exclude custody status waiver for enumerated serious offenses	Would removing the waiver exclusions have a more neutral effect?	—		CSP, DEP
48	2.B.3	Include prior gross misdemeanors and misdemeanors in criminal history	Would excluding prior gross misdemeanors and misdemeanors from criminal history have a more neutral effect?	—		MSD
49	2.B.3	Each misdemeanor or gross misdemeanor equals one unit; four units equal one point in criminal history	Would changing the unit valuation, or permitting ½ misdemeanor point, have a more neutral effect?	—		MSD

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
50	2.B.3.a	Count only post-sentence units	Would including post-conviction misdemeanor units have a more neutral effect?	—		MSD
51	2.B.3.a(1)	Among misdemeanors, only a targeted misdemeanor contributes a unit	Would including, more, fewer, or no misdemeanors have a more neutral effect?	—		MSD
52	2.B.3.a(2)	Every non-traffic gross misdemeanor contributes a unit	Would excluding some non-traffic gross misdemeanors have a more neutral effect?	—		MSD
53	2.B.3.a(3)-(5)	Among traffic gross misdemeanors, only DWI and reckless driving contributes to criminal history	Would excluding more, or fewer, traffic gross misdemeanor have a more neutral effect?	—		MSD
54	2.B.3.b	Exclude gross misdemeanors sentenced within misdemeanor limits, unless a targeted misdemeanor	Would entirely excluding or including gross misdemeanors sentenced within misdemeanor limits have a more neutral effect?	Related to	609.13; 299C.10, subd. 1(e)	MSD
55	2.B.3.c	Use only one prior per course of conduct when multiple sentences were permitted under 152.137, 609.585, or 609.251	Would always using only one prior, or all priors, per course of conduct have a more neutral effect?	Related to	609.035 et al.	MSD, MLT
56	2.B.3.d	Use only two priors per course of conduct involving multiple victims	Would using only one prior, or all priors, have a more neutral effect?	Related to	609.035 et al.	MSD, MLT
57	2.B.3.e	A prior gross misdemeanor or misdemeanor decays after time	Would eliminating decay have a more neutral effect?	—		MSD, TIM
58	2.B.3.e	The gross misdemeanor or misdemeanor decay period is 10 years	Would a different decay period have a more neutral effect?	—		MSD, TIM
59	2.B.3.e	Stay-of-imposition misdemeanors—i.e., successfully completed stay-of-imposition felonies—use the felony decay period	Would applying the misdemeanor decay period have a more neutral effect?	—		MSD, TIM
60	2.B.3.f	Cap misdemeanor and gross misdemeanor points at 1 except in DWI/CVO cases	Would removing the one-point cap have a more neutral effect?	—		MSD
61	2.B.3.g	In DWI/CVO cases, misdemeanor/gross misdemeanor weight doubles, and there is no cap	Does this policy have a neutral effect?	—		MSD

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
62	2.B.3.h	Don't count prior adult court traffic offense (misdemeanor or gross misd. DWI) committed by juvenile offender	Does this policy have a neutral effect?	—		JUV
63	2.B.4	Include prior felony juvenile adjudications in criminal history	Would excluding prior juvenile adjudications have a more neutral effect?	—		JUV
64	2.B.4.a	Assign one point per two prior juvenile adjudications	Would changing the valuation, or making each adjudication worth ½ point, have a more neutral effect?	—		JUV
65	2.B.4.a(2)	Exclude adjudications for offenses committed at age 13 or younger	Would increasing or eliminating this age limit have a more neutral effect?	—		JUV
66	2.B.4.a(3)	Give no weight to juvenile adjudications if current offense was committed at age 25 or older	Would increasing, decreasing, or eliminating this age limit have a more neutral effect?	—		JUV, TIM
67	2.B.4.b	Cap juvenile points at 1, except for presumptive-commit juvenile priors	Would capping juvenile points at ½ or 2, or removing the cap, have a more neutral effect?	—		JUV
68	2.B.4.b	Juvenile priors for presumptive-commit offenses (at CHS=0) are not capped	Would subjecting presumptive-commit priors to the general cap have a more neutral effect?	—		JUV
69	2.B.4.c	Use only one juvenile prior per course of conduct when multiple sentences were permitted under 152.137, 609.585, or 609.251	Would always using only one prior per course of conduct have a more neutral effect?	Related to	609.035 et al.	JUV, MLT
70	2.B.4.a(1)	Use all juvenile priors from same course of conduct when multiple sentences were permitted under other statutes	Would always using all priors from same course of conduct have a more neutral effect?	Related to	609.035 et al.	JUV, MLT
71	2.B.4.d	Use only two juvenile priors per course of conduct involving multiple victims	Would using only one prior, or all priors, have a more neutral effect?	Related to	609.035 et al.	JUV, MLT
72	2.B.5.a, c	Count out-of-state felonies the same as their Minnesota felony equivalents	Would excluding out-of-state felonies have a more neutral effect?	—		CHS
73	2.B.5.b	Treat out-of-state felonies as Minn. felony equivalents only if the offender received a Minn.-felony-level sentence	Would a simple elements-only test have a more neutral effect?	—		CHS

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
74	2.B.5.b	Treat out-of-state, non-federal felonies as Minn. felony equivalents only if the elements match a Minn. felony	Would a simple maximum-penalty test have a more neutral effect?	—		CHS
75	2.B.5.d	If a federal felony has no Minnesota equivalent, assign one point in criminal history	Would a simple one-point rule for all out-of-state & federal felonies have a more neutral effect?	—		CHS
76	2.B.5.e	Count out-of-state juvenile offenses in criminal history if they meet the requirements in section 2.B.4	Would excluding out-of-state juvenile offenses have a more neutral effect?	—		CHS
77	2.B.5.e	Count out-of-state juvenile offenses as felonies if factfinder determines it would have been certified	Would treating these offenses as juvenile offenses have a more neutral effect?	Related to	260B.125	JUV
78	2.B.6.a	For enhanced felony, use predicate offense's custody status for custody status point	Would excluding predicate offense's custody status have a more neutral effect?	Related to	Various	CSP
79	2.B.6.b	For enhanced felony, count predicate felony in criminal history	Would excluding predicate felonies from criminal history have a more neutral effect?	Related to	Various	CHS
80	2.B.6.a-b & 2.B.3.g	For enhanced felony, do not count predicate misdemeanors/gross misdemeanors in criminal history	Would including predicate misdemeanors in criminal history have a more neutral effect? Alternatively, would excluding, for subsequent enhanced felony, the original predicate misdemeanors in criminal history (DWI rule) have a more neutral effect?	Related to	Various	MSD
81	2.B.6.b	For subsequent felony DWI, exclude original predicate misdemeanors/gross misdemeanors in criminal history	Would including these predicate misdemeanors in criminal history have a more neutral effect?	Related to	169A.24	MSD
82	2.B.7.a	Current Minnesota offense definitions (the current, element-based definition of a crime, per Strobel) determine how prior offenses are classified in criminal history	Would using the classification of the crime when it was originally sentenced have a more neutral effect?	—		MSD, TIM

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
83	2.B.7.b	Prior monetary thresholds determine how prior offenses are classified in criminal history	Would using the current monetary threshold have a more neutral effect?	Related to	609.52, subd. 3 et al.	MSD, TIM
84	2.C.1	Shaded cells are presumptive stays; non-shaded cells are presumptive executed	Would moving the disposition lines right, left, up, or down have a more neutral effect?	Reflective of	244.09, subd. 5	DSP
85	2.C.1	Each non-shaded cell contains a -15%/+20% range	Would a different range, or no range, have a more neutral effect?	Required by	244.09, subd. 5	DUR
86	2.C.1	The floor of the range is one year and one day	Would removing the floor have a more neutral effect?	Reflective of	609.02, subd. 2	DUR
87	2.C.1	For shaded cells where the sentence is presumptive executed by policy, the standard range (-15%/+20%) applies but is not displayed.	Would displaying ranges in the shaded cells—to guide practitioners for shaded presumptive commits—have a more neutral effect?	—		DUR
88	2.C.1	For shaded cells where the sentence is not presumptive executed by policy, the standard range (-15%/+20%) does not apply.	Would permitting application of ranges in shaded cells have a more neutral effect?	Reflective of	244.09, subd. 5	DUR
89	2.C.2 & 2.C.1	The range is capped by the offense statutory maximum	Would removing the ceiling have a more neutral effect?	Required by	609.095(a)	DUR
90	2.C.3.a(1)	For life sentences for egregious first-time sex offenders and repeat sex offenders, Guidelines presumptive sentence governs minimum term of imprisonment	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	609.3455, subd. 5	DUR
91	2.C.3.a(2)	For repeat sex offense conviction within 15 years, presumptive disposition is commitment	Would eliminating this mandatory minimum have a more neutral effect?	Reflective of	609.3455, subd. 10	DSP
92	2.C.3.a(2)	For repeat sex offense conviction within 15 years, presumptive duration is greater of grid time or 36 months	For shaded cells with durations greater than 36 months, would requiring only the statutory duration of 36 months have a more neutral effect?	Reflective of	609.3455, subd. 10	DUR
93	2.C.3.b	If burglary of an occupied dwelling was ever preceded by a felony burglary conviction, the presumptive disposition is commit and duration is grid time	Would eliminating this policy have a more neutral effect?	Related to	609.582, subd. 1(a)	DSP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
94	2.C.3.c(1)	Lower range does not apply for offenses involving over 100 g of some drugs	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	152.021, subd. 3	DUR
95	2.C.3.c(2)	For subsequent controlled substance convictions in the 1st Degree, presumptive disposition is commitment, presumptive duration is grid time	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	152.021, subd. 3(b)	DSP
96	2.C.3.c(2)	For subsequent controlled substance convictions in the 2nd Degree, presumptive disposition is commitment	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	152.022, subd. 3(b)	DSP
97	2.C.3.c(2)	For subsequent controlled substance convictions in the 2nd Degree, presumptive duration is grid time	Would requiring only the statutory duration of 36 months have a more neutral effect?	Related to	152.022, subd. 3(b)	DUR
98	2.C.3.d	If felony DWI was ever preceded by previous felony DWI, CVH, or CVO conviction, presumptive disposition is commitment	Would eliminating this policy have a more neutral effect?	Related to	169A.24	DSP
99	2.C.3.e	Presumptive disposition is commitment for escape from executed sentence	Would eliminating this policy have a more neutral effect?	Related to	609.485, subd. 4(c)	DSP
100	2.C.3.e	Presumptive disposition is commitment for felony assault by prison inmate; or assault on secure treatment facility personnel	Would eliminating this policy have a more neutral effect?	Reflective of	609.2232; 609.2231, subd. 3a(d)	DSP
101	2.D.1	Departure from presumptive sentence must be supported by identifiable, substantial, and compelling circumstances	Would a stricter, or more relaxed, departure standard have a more neutral effect?	Related to	244.10, subd. 2	DEP
102	2.D.1	A misdemeanor/gross misdemeanor sentence for a felony is always a mitigated durational departure	Would treating a misdemeanor/gross misdemeanor sentence like a stayed sentence (not a departure in shaded cells) have a more neutral effect?	Related to	609.13	MSD, DEP
103	2.D.1.a	Dispositional and durational departures each require separate reasons	Would permitting the same mitigating reasons to justify any mitigated departure, and the same aggravating reasons to justify any aggravated departure, have a more neutral effect?	Related to	244.10, subd. 2	DEP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
104	2.D.1.b	Aggravated departures are recommended to be proportional to the offense severity and considerate of the Guidelines' purposes and principles	Would having more specific guidelines governing the length of aggravated durational departures have a more neutral effect?	Related to	244.10, subd. 2	DEP
105	2.D.1.c	Courts must articulate substantial and compelling reasons for departure	Would not requiring articulated departure grounds—making the Guidelines purely advisory—have a more neutral effect?	Reflective of	244.10, subd. 2	DEP
106	2.D.1.d	Guidelines' departure factors are merely advisory	Would requiring all departures to be based on departure factors have a more neutral effect? Do the nonspecified departure factors now in use have a neutral effect?	Reflective of	244.10, subd. 4	DEP
107	2.D.1.e	Guidelines apply at sentencing after revoked stay of adjudication	Would treating stays of adjudication like probation revocations, where only section 3.B. advice applies, have a more neutral effect?	Related to	609.095(b)	DEP
108	2.D.1.f	Offender's demand for execution is not a departure	Would requiring departure grounds for execution demands have a more neutral effect?	—		DEP
109	2.D.2.a	Race should not be used as a reason for departure	Would permitting judges to consider race when deciding whether to depart have a more neutral effect?	—		DEP
110	2.D.2.b	Sex should not be used as a reason for departure	Would permitting judges to consider sex when deciding whether to depart have a more neutral effect?	—		DEP
111	2.D.2.c	Employment factors should not be used as a reason for departure	Would permitting judges to consider employment factors when deciding whether to depart have a more neutral effect?	—		DEP
112	2.D.2.d	Social factors should not be used as a reason for departure	Would permitting judges to consider social factors when deciding whether to depart have a more neutral effect?	—		DEP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
113	2.D.2.e	The defendant's exercise of constitutional rights during the adjudication process should not be used as a reason for departure	Would permitting judges to consider such factors when deciding whether to depart have a more neutral effect?	—		DEP
114	2.D.3.a(1)	A mitigated departure may be based on whether the victim was the aggressor	Would eliminating this departure factor have a more neutral effect?	—		DEP
115	2.D.3.a(2)	A mitigated departure may be based on the offender's minor role or participation under duress	Would eliminating this departure factor have a more neutral effect?	—		DEP
116	2.D.3.a(3)	A mitigated departure may be based on the offender's lack of substantial capacity for judgement	Would eliminating this departure factor have a more neutral effect?	—		DEP
117	2.D.3.a(3)	Lack of substantial judgment due to voluntary intoxication is not a reason for departure	Would making voluntary intoxication a departure factor have a more neutral effect?	—		DEP
118	2.D.3.a(4)(a)	A mitigated departure may be based on the offender's receiving all felony priors at 1 or 2 court appearances, if the offense is SL 1 or 2 and a presumptive commit but not a mandatory minimum sentence	Would eliminating this departure factor have a more neutral effect?	—		DEP
119	2.D.3.a(4)(b)	A mitigated departure may be based on the offender's receiving all felony priors at 1 court appearance, if the offense is SL 3 or 4 and a presumptive commit but not a mandatory minimum sentence	Would eliminating this departure factor have a more neutral effect?	—		DEP
120	2.D.3.a(5)	A mitigated departure may be based on other substantial grounds tending to excuse or mitigate culpability	Would eliminating this departure factor have a more neutral effect?	—		DEP
121	2.D.3.a(6)	A mitigated departure may be based on alternative placement for offender with serious, persistent mental illness	Would eliminating this departure factor have a more neutral effect?	Reflective of	609.1055	DEP
122	2.D.3.a(7)	A mitigated departure may be based on particular amenability to probation	Would eliminating this departure factor have a more neutral effect?	—		DEP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
123	2.D.3.a(8)	A mitigated departure may be based on particular amenability to probation in a drug case where defendant is accepted into, and can respond to, a drug treatment program	Would eliminating this departure factor have a more neutral effect?	Reflective of	152.152	DEP
124	2.D.3.b(1)	An aggravated departure may be based on victim's particular vulnerability	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(1)	DEP
125	2.D.3.b(2)	An aggravated departure may be based on particular cruelty	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(2)	DEP
126	2.D.3.b(3)	An aggravated departure may be based on current and prior felony that were both CSC or involved other victim injury	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(3)	DEP
127	2.D.3.b(4)	An aggravated departure may be based on a major economic offense with two of the listed circumstances present	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(4)	DEP
128	2.D.3.b(5)	An aggravated departure may be based on a major controlled substance offense with two of the listed circumstances present	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(5)	DEP
129	2.D.3.b(6)	An aggravated departure may be based on offender committing a crime for hire against a person	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(6)	DEP
130	2.D.3.b(7)	An aggravated departure may be based on statutory "engrained offender" status	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(7); 609.3455, subd. 3a	DEP
131	2.D.3.b(8)	An aggravated departure may be based on statutory "dangerous offender who commits a third violent crime" status	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(8); 609.1095, subd. 2	DEP
132	2.D.3.b(9)	An aggravated departure may be based on statutory "career offender" status	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(9); 609.1095, subd.4	DEP

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
133	2.D.3.b(10)	An aggravated departure may be based on being part of three or more active participants in the crime	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(10)	DEP
134	2.D.3.b(11)	An aggravated departure may be based on biased motivation	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(11)	DEP
135	2.D.3.b(12)	An aggravated departure may be based on stolen identity	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(12)	DEP
136	2.D.3.b(13)	An aggravated departure may be based on commission in child's presence	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(13)	DEP
137	2.D.3.b(14)	An aggravated departure may be based on violation of zone of privacy	Would eliminating this departure factor have a more neutral effect?	Reflective of	244.10, subd. 5a(a)(14)	DEP
138	2.E.1	If a statutory mandatory minimum of more than 1 year applies, the presumptive disposition is always commitment	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	Various	DSP
139	2.E.1, 2.G.2	If a statutory mandatory minimum of more than 1 year applies to the underlying offense, the presumptive disposition for an attempt or conspiracy is always commitment, even if the mandatory minimum does not explicitly apply to attempt or conspiracy	Would restricting this rule to mandatory minimums that explicitly applied to attempts and conspiracies have a more neutral effect?	Related to	Various	DSP
140	2.E.1	If a statutory mandatory minimum of more than 1 year applies, the presumptive duration is the mandatory minimum or the grid time (½ grid time for attempts & conspiracies), whichever is greater	For shaded cells with durations greater than the mandatory minimum, would requiring only the mandatory minimum duration have a more neutral effect? For attempts and conspiracies, would dividing the mandatory minimum in half, when not forbidden (see 2.G.5), have a more neutral effect?	Related to	Various	DUR
141	2.E.2.a	Mandatory statutory maximum for Murder 2 & 3 if previous heinous offense conviction within 15 years	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	609.107	DUR

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
142	2.E.2.b	In 609.11 cases, the presumptive disposition becomes commitment and the presumptive duration becomes the greater of grid time or the mandatory minimum	Would a policy in which grid presumptions could be restored by a judicial finding of 609.11, subd. 8, factors have a more neutral effect?	Related to	609.11	DUR, DSP
143	2.E.2.c(1)	For Aggravated Controlled Substance Crime 1st Degree involving a dangerous weapon but based on non-firearm aggravating factors, the 609.11 mandatory minimum for the weapon is stacked on the Guidelines presumptive sentence for the drug offense	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	609.11, subd. 5a; 152.021, subd. 2b(2)	DUR
144	2.E.2.c(2)	For subsequent Controlled Substance Crime, 1st or 2nd Degree, involving a dangerous weapon, the 609.11 mandatory minimum for the firearm is stacked on the mandatory minimum for the subsequent drug offense, unless grid time is greater	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	609.11, subd. 5a; 152.021 & 152.022, subd. 3(b)	DUR
145	2.E.2.d	For third violent felony, disposition is commitment, grid time	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	609.1095, subd. 3	DUR, DSP
146	2.E.2.e	Felony DWI must receive imposed sentence of at least 36 months; stay of execution permitted	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	169A.276	DUR
147	2.E.3	Enumerated statutory conditional release terms must be pronounced	Would removing the statutory requirement from the Guidelines have a more neutral effect?	Reflective of	Various	PRB
148	2.E.4	Mandatory life sentences are not governed by the Guidelines	Would Guidelines for life sentences have a more neutral effect?	Reflective of	609.106; 609.3455, subd. 2	DUR
149	2.F	Concurrent sentencing is generally presumptive	Would eliminating this presumption have a more neutral effect?	Reflective of	609.15	MLT
150	2.F	It is a departure to impose consecutive sentences when not prescribed by Guidelines	Would removing consecutive sentencing from the Guidelines have a more neutral effect?	—		MLT

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
151	2.F.1.a	Consecutive sentences are sometimes presumptive	Would eliminating presumptive-consecutive sentences—making them permissive instead—have a more neutral effect?	—		MLT
152	2.F.1.a	Presumptive consecutive sentencing requires prison or prison-escape status	Would using different statuses, or different criteria altogether, have a more neutral effect?	Related to	609.2232; 609.2231, subd. 3a(d); 609.485, subd. 4(c)	MLT
153	2.F.1.b	Presumptive consecutive sentencing requires that the current offense be a presumptive commit using § 2.C rules	Would permitting presumptive consecutive sentencing even for presumptive stays have a more neutral effect?	—		MLT
154	2.F.1.c	For presumptive consecutive offenses, the presumptive duration is calculated using a CHS of 1 (or mandatory minimum)	Would a CHS of 0, or the actual CHS, have a more neutral effect?	—		MLT
155	2.F.1.d	Presumptive consecutive sentencing does not apply if a concurrent sentence would effectively be longer	Does this policy have a neutral effect?	—		MLT
156	2.F.1.e	Multiple presumptive consecutive sentences are concurrent to each other unless permissive consecutive sentencing would be longer	Does this policy have a neutral effect?	—		MLT
157	2.F.1.f	A special departure factor can be used only to change a presumptive consecutive into concurrent: material assistance in crime detection or prosecution	Would eliminating this departure factor, or applying it to mitigated departures in general, or applying it automatically upon the prosecutor's certificate, have a more neutral effect?	—		MLT, DEP
158	2.F.1.g	Presumptive consecutive sentencing applies to any non-executed felony DWI if defendant is still under sentence for previous DWI	Does this policy have a neutral effect?	Reflective of	169A.28, subd. 1(2)	MLT
159	2.F.2.a(1)	In general, permissive consecutive sentencing requires that the current offense be a presumptive commit using § 2.C rules	Would permitting permissive consecutive sentencing even for presumptive stays have a more neutral effect?	—		MLT

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
160	2.F.2.a(1)	In general, permissive consecutive sentencing also requires that the other offense—the one to which the sentence will be consecutive—be a presumptive commit using § 2.C rules	Would disregarding the presumptive disposition of the other offense—or regarding only the actual disposition, regardless of presumptive disposition—have a more neutral effect?	—		MLT
161	2.F.2.a(1)	In general, permissive consecutive sentencing requires that both offenses be listed in § 6	Would permitting permissive consecutive sentencing if only one offense was on the list, or neither, have a more neutral effect? Would changing the list have a more neutral effect?	—		MLT
162	2.F.2.a(1)(iii)	A presumptive-commit offense committed while on non-prison felony escape may be sentenced consecutively to the escape and/or the offense of confinement	Does this policy have a neutral effect?	—		MLT
163	2.F.2.a(2)(i)	A non-prison felony escape is always permissively consecutive to the offense of confinement; imprisonment is not a dispositional departure	Does this policy have a neutral effect?	—		MLT
164	2.F.2.a(2)(ii)	A felony committed while on prison-escape status is always permissively consecutive to the escape.	Does this policy have a neutral effect?	—		MLT
165	2.F.2.a(2)(iii)	Fleeing a Peace Officer in a Motor Vehicle or Criminal Sexual Conduct 1–4 and any other crime committed as part of the same conduct may always be sentenced consecutively	Does this policy have a neutral effect?	Required by	609.035, subd. 5 & 6	MLT
166	2.F.2.a(2)(iv)	A felony assault in jail may be sentenced consecutively to any other executed presumptive-commit offense	Does this policy have a neutral effect?	—		MLT
167	2.F.2.b	For permissive consecutive offenses, the presumptive duration is calculated using a CHS of 0 (or mandatory minimum)	Would a CHS of 1, or the actual CHS, have a more neutral effect?	—		MLT

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
168	2.F.4	A sentence consecutive to a pre-Guidelines case begins after completion of any incarceration arising from the prior sentence	Does this policy have a neutral effect?	—		TIM
169	2.G.1	Modifiers cannot decrease a sentence below a year and a day or a mandatory minimum, nor increase it above the statutory maximum	Would permitting the presumptive sentence to be less than the mandatory minimum have a more neutral effect?	Related to	609.02, subd. 2; various	DUR
170	2.G.2, 2.G.3, 2.G.6	The presumptive duration for an attempt, conspiracy, solicitation (of juvenile or mentally impaired person), or taking responsibility for a criminal act is half the grid time for the underlying offense	Would a larger or smaller fraction have a more neutral effect?	Related to	609.17; 609.175; 609.493; 609.494; 609.495, subd. 4	DUR
171	2.G.02	The presumptive disposition for an attempt, conspiracy, solicitation, or taking responsibility for criminal acts is the same as the disposition of the underlying offense	Would a policy in which presumptive stays were provided for some anticipatory crimes (e.g., those with shorter presumptive durations), even when the completed crime was a presumptive commit, have a more neutral effect?	Related to	609.17; 609.175; 609.493; 609.494; 609.495, subd. 4	DSP
172	2.G.4	The presumptive sentence for a conspiracy to commit a controlled substance crime is identical to that of the underlying offense	Would treating drug conspiracies like other conspiracies have a more neutral effect?	Related to	152.096	DUR, DSP
173	2.G.5	The statutory minimum presumptive sentence for criminal sexual conduct, 1st and 2nd degrees, is divided in half for attempts and conspiracies	Would treating these minimum presumptive sentences like other mandatory minimums—using the whole mandatory minimum for attempts and conspiracies—have a more neutral effect?	Related to	609.342 & 609.343, subd. 2(b)	DUR
174	2.G.7	The presumptive duration for an offense committed in furtherance of terrorism is +50%	Would a larger or smaller percentage have a more neutral effect?	Related to	609.714	DUR

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
175	2.G.8	If a predatory crime qualifies as criminal sexual predatory conduct, the presumptive duration is +25% (+50% if there is a previous sex offense conviction)	Would a larger or smaller percentage have a more neutral effect?	Related to	609.3453	DUR
176	2.G.9	The presumptive duration for aggravated sex trafficking in the first degree is 48 mo. longer than the presumptive duration for sex trafficking in the first degree (+24 mo. for attempt or conspiracy)	Would more or fewer months have a more neutral effect?	Related to	609.322, subd. 1(b)	DUR
177	2.G.10	The presumptive disposition for a felony committed for the benefit of a gang is commitment to prison	Does this policy have a neutral effect?	Reflective of	609.229	DSP
178	2.G.10; 2.F.3	The presumptive duration for a completed felony committed for the benefit of a gang is +12 mo. (+24 mo. if the victim was a child); the increase is halved for an attempt or conspiracy	Would more or fewer months have a more neutral effect?	Related to	609.229	DUR
179	2.G.11	The presumptive duration for a felony assault motivated by bias is +25%	Would a larger or smaller percentage have a more neutral effect?	Related to	609.2233	DUR
180	2.G.12	The presumptive duration for Criminal Vehicular Homicide is +50% if preceded by a qualified prior driving offense within 10 years	Would a larger or smaller percentage have a more neutral effect?	Related to	609.2112 & 609.2114, subd. 1(b)	DUR
181	2.G.13	A one-line grid establishes presumptive durations between 15 and 20 years for attempt or conspiracy to commit first-degree murder	Does this policy have a neutral effect?	Related to	609.17, subd. 4(1); 609.175, subd. 2(2)	DUR
182	2.G.14	The presumptive duration for a severe violent offense (as listed in § 8) is +12 mo., +18 mo., or +24 mo. for 1, 2, or 3+ prior severe violent offense convictions, respectively	Would more or fewer months have a more neutral effect?	—		DUR

No.	Guidelines Section	Guidelines Policy	Possible Study Question	Connection to Statute	Relevant Statute	Policy Group
183	3.A.1	General recommendations are made regarding when to use stays of imposition vs. stays of execution	Would measurable guidelines regarding when to use stays of imposition vs. stays of execution have a more neutral effect?	Related to	609.13, subd. 1(2); 609.135; 244.09, subd. 5	PRB
184	3.A.2	The pronounced length of stay may not exceed five years, except for certain homicide and sex offenses or when substantial and compelling reasons support a departure	Would a longer or shorter length of stay have a more neutral effect? Would more or fewer exclusions have a more neutral effect?	Related to	609.135, subd. 2; 244.09, subd. 5	PRB
185	3.A.3	General recommendations are made regarding other conditions of stayed sentences, including jail durations	Would measurable guidelines regarding conditions of stayed sentences, including jail durations, have a more neutral effect?	Related to	244.09, subd. 5	PRB
186	3.B	General recommendations are made regarding revocation of stayed sentences	Would measurable guidelines regarding probation revocation have a more neutral effect?	Related to	609.14	PRB
187	3.C, 3.C.04	Specific guidance is given regarding the applicability of jail credit, including for work release, but not the applicability of jail credit to non-correctional residential facilities or electronic monitoring	Would including guidance regarding the applicability of jail credit to non-correctional residential facilities or electronic monitoring have a more neutral effect?	Related to	609.145; 631.425	PRB
188	3.D	The Guidelines apply when juveniles are certified as adults	Does this policy have a neutral effect?	Related to	260B.125	JUV
189	3.D	The Guidelines apply to the stayed adult sentence included in an EJJ disposition	Does this policy have a neutral effect?	Related to	260B.130	JUV
190	3.E	A presentence physical or mental examination is recommended for certain sex offenders	Would expanding or reducing the list of applicable offenses have a more neutral effect?	Related to	609.115	DEP
191	3.F	Courts must make a presentence inquiry as to the defendant's veteran status and take appropriate action per the statute	Would more specific guidance regarding disposition of veterans have a more neutral effect?	Reflective of	609.115, subd. 10	DEP
192	3.G	Changes to Sentencing Guidelines policy are prospective only	Would giving ameliorative changes immediate effect have a more neutral effect?	Related to	244.09, subd. 11	TIM