

Notice of Public Hearing

Proposed Amendments to the Minnesota Sentencing Guidelines and Commentary

Date of Notice: August 2, 2021

Date of Hearing: September 1, 2021

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Wednesday, September 1, 2021, at 1:00 p.m., in the Minnesota State Capitol Building, Room G-3, 75 Rev. Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota 55155. A remote-participation option will be available: Members of the public may monitor and participate in the hearing remotely, and some Commission members may participate by interactive technology. Refer to web site (mn.gov/sentencing-guidelines) for information on how to attend the public hearing remotely.

All interested persons are encouraged to participate 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. The Commission will hold the record open for five calendar days after the public hearing to accept written comment.

Modifications are subject to final adoption by the Commission at its meeting on September 9, 2021. Meeting information will be posted on the Commission's [web site](#). If adopted, modifications will take effect September 15, 2021, and will apply to crimes committed on or after that date.

This notice, which is available in alternative formats upon request, was posted on the MSGC web site on August 2, 2021.

Proposed Modifications

The public hearing is being held to consider proposed modifications to the 2020 Minnesota Sentencing Guidelines and Commentary resulting from: (A) legislative amendments to crime laws affecting the Guidelines enacted in the 2021 1st Special Session; (B) legislative amendments to crime laws affecting the Guidelines enacted in the 2021 Regular Session (beginning on page 29); and (C) a non-legislative technical

correction (beginning on page 31). The specified effective date of all proposed modifications is September 15, 2021.

A. Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 1st Special Session

As a result of its review of 2021 1st Special Session Laws, the Commission proposes the modifications summarized in Table 1. The Commission proposed these modifications at its meeting on July 22, 2021. The proposed modifications are shown immediately following Table 1.

Table 1. Summary of Proposed Modifications Resulting from Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 1st Special Session

No.	Proposed Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	To Amend Guidelines section(s)
1.	Rank Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force) at Severity Level 11	ch. 11, art. 2, § 31	5.A & 5.B
2.	Rank Assault 1st Degree (Great Bodily Harm Upon Official) at Severity Level 10	ch. 11, art. 2, § 31	5.A & 5.B
3.	Rank Child Torture at Severity Level 8	ch. 11, art. 2, § 39	5.A & 5.B
4.	Rank Patrons of Prostitution (2nd or Subsequent Violation) at Severity Level 3	ch. 11, art. 2, § 34	5.A & 5.B
5.	Rank the new Criminal Sexual Conduct force offenses involving infliction of bodily harm at Severity Level A (Criminal Sexual Conduct First Degree) and Severity Level B (Criminal Sexual Conduct Second Degree) and add those offenses to the Severe Violent Offense List	ch. 11, art. 4, §§ 6, 16, & 17	5.A, 5.B, & 8
6.	Rank prohibited occupational relationship Criminal Sexual Conduct offenses at Severity Level C (Criminal Sexual Conduct Third Degree) and Severity Level E (Criminal Sexual Conduct Fourth Degree)	ch. 11, art. 4, §§ 12, 18, & 19	5.A & 5.B
7.	Rank Sexual Extortion at Severity Level C (penetration) or Severity Level E (contact), and add the offense to the list of exceptions to the limitation on the pronounced length of stay	ch. 11, art. 4, § 22	3.A.2.d, 5.A, & 5.B

No.	Proposed Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	To Amend Guidelines section(s)
8.	Maintain existing rankings for those Criminal Sexual Conduct offenses involving force by attempt or threat, and for those Criminal Sexual Conduct coercion offenses uncoupled from force	ch. 11, art. 4, §§ 6, 16–19	5.A & 5.B
9.	Make no Guidelines changes, other than conforming changes, as a result of statutory changes to age gaps in Criminal Sexual Conduct offenses, and statutory changes to age thresholds in Criminal Sexual Conduct, prostitution, and child pornography offenses	ch. 11, art. 4, §§ 5, 16–19, 24–28	5.A & 5.B
10.	Treat reorganized Criminal Sexual Conduct offenses in the same way that corresponding offenses with identical elements are treated in the existing Guidelines	ch. 11, art. 4, §§ 16–19	2.G.5, 5.A, 5.B, & 8
11.	Increase the severity levels of Use of Minors in Sexual Performance as legislatively adopted	ch. 11, art. 2, § 52	5.A & 5.B
12.	Increase the severity levels of enhanced child pornography dissemination and possession offenses as legislatively directed	ch. 11, art. 2, § 52	5.A & 5.B
13.	Rank Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) at Severity Level H, but shaded at criminal history scores of 0 through 4 and capped at 24-month durations due to the statutory maximum	ch. 11, art. 4, § 20	4.B, 5.A, & 5.B
14.	Create a new Severity Level I, identical to the existing Severity Level H, for Failure to Register as a Predatory Offender	ch. 11, art. 4, § 20	4.B, 5.A, & 5.B
15.	Assign to a prior felony sentence for Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) a weight of 1 or ½ point, depending on whether the current offense is on the Sex Offender Grid or not	ch. 11, art. 4, § 20	2.B.1
16.	Add Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) and Child Torture to the list of Offenses Eligible for Permissive Consecutive Sentences	ch. 11, art. 2, § 39; art. 4, § 20	6
17.	Reference the Veterans Restorative Justice Act in the Guidelines’ policy on military veterans	ch. 12, art. 3, § 13	3.F

No.	Proposed Modification	Resulting from 2021 Minn. Laws 1st Sp. Sess.	To Amend Guidelines section(s)
18.	Incorporate the Veterans Restorative Justice Act's statutory departure factor within the Guidelines' list of departure factors	ch. 12, art. 3, § 13	2.D.3.a
19.	Amend Appendix 1 to refer to the new mandatory minimums for Assault 1st Degree	ch. 11, art. 2, § 31	Appendix 1
20.	Make conforming, clarifying, distinguishing, technical, and editorial amendments	ch. 11, art. 2, §§ 31 & 52 ; art. 4, §§ 4, 6, 12, 16–19, 20 & 22	1.B.17, 2.B.1, 4.A, 4.B, 5.A, 5.B, & 6; Appendix 3; & comments 2.B.202 & 2.B.406

The following amendments are proposed to the 2020 Minn. Sentencing Guidelines and Commentary:

Minnesota Sentencing Guidelines and Commentary

1. Purpose and Definitions * * *

B. Definitions

As used in these Sentencing Guidelines (or "Guidelines"), the following terms have the meanings given. * * *

17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into ~~eight~~ nine severity levels, ranging from high (Severity Level A) to low (Severity Level H I). Drug offenses

are arranged on the Drug Offender Grid into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

* * *

2. Determining Presumptive Sentences * * *

B. Criminal History * * *

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

- a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	2
	B – E	1½
	F – G	1
	H	½
	H I	½ (for first offense); 1 (for subsequent offenses)

- b. Current Offense on Sex Offender Grid. If the current offense is on the Sex

Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	3
	B – C	2
	D – E	1½
	F – G <u>H</u>	1
	H <u>I</u>	½ (for first offense); 1 (for subsequent offenses)

* * *

Comment

* * *

2.B.202. *The Commission intended to avoid criminal history scores in which a prior offense’s custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H or I offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point.*

* * *

2.B.406. *The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 point on the basis of prior juvenile adjudications. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the Guidelines would presume imprisonment, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or ~~H~~ I), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. The criminal history record is not used to determine whether the juvenile offense*

carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile adjudications are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.

* * *

D. Departures from the Guidelines * * *

3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

a. Mitigating Factors. * * *

(9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4.

* * *

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers * * *

5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree. The Commission regards the provisions in Minn. Stat. § 609.342, subd. 2(b) and 609.343, subd. 2(b) as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minn. Stat. § 609.342 or Criminal Sexual Conduct in the Second Degree under Minn. Stat. § 609.343, ~~subd. 1(c), (d), (e), (f), and (h)~~ subd. 1(a), 1(b), 1(c), 1(d), 1(e), 1a(a), 1a(b), 1a(c), 1a(d), 1a(h), or 1a(i), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

* * *

3. Related Policies

A. Establishing Conditions of Stayed Sentences * * *

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.

* * *

- 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), or 609.3458 (Sexual Extortion).

* * *

F. Military Veterans

Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minn. Stat. § 609.1056 provides deferred judgment procedures for certain criminal offenses related to service-related disorders if the defendant is a United States military service member or veteran.

* * *

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 2nd Degree (Unintentional) Murder, 3rd Degree (Depraved Mind)</i>	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Murder, 3rd Degree (Controlled Substances) (Drugs) Assault, 1st Degree (Great Bodily Harm)</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>

* * *

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²</i>
<i>CSC 2nd Degree-1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i)(j)(k) (e.g., contact, & force, & injury with bodily harm)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
<i>CSC 3rd Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., penetration & force coercion/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i> 183	180 <i>153-180²</i> 216
<i>CSC 2nd Degree-1a(e)(f)(a)(b)(g) (age) (e.g., contact & victim under 13)</i> <i>CSC 3rd Degree-1a(a)(e)(f) or 1a(b) with 2(1) (age) (e.g., penetration & child victim)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., contact & force coercion/occupation)</i> <i>Dissemination of Child Pornography²</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²</i>
<i>CSC 4th Degree-1a(a)(b)(e)(f) (age) (e.g., contact & child victim)</i> <i>CSC 5th Degree-3(b) (subsequent) Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree-1a(b) with 2(2) (i.e., penetration & child victim 24-48 mo. younger)</i> <i>Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60²</i>
<i>CSC 5th Degree-3(a) (nonconsensual penetration)</i>	H	<u>12¹</u>	<u>14</u>	<u>16</u>	<u>18</u>	<u>24</u>	<u>24²</u> <u>24-24</u>	<u>24²</u> <u>24-24</u>
<i>Failure to Register as a Predatory Offender</i>	H I	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2. For Severity Level H, all displayed durations, including the upper and lower ranges, are constrained by the statutory maximum at criminal history scores above 4.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Severity Level	Offense Title	Statute Number
11	Adulteration	609.687, subd. 3(1)
	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>609.221, subd. 4</u>
	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings)	609.19, subd. 1
	Murder of an Unborn Child 2nd Degree	609.2662(1)
10	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>	<u>609.221, subd. 3</u>
	Fleeing a Peace Officer (Death)	609.487, subd. 4(a)
	Murder 2nd Degree (Unintentional Murder)	609.19, subd. 2
	Murder of an Unborn Child 2nd Degree	609.2662(2)
	Murder 3rd Degree	609.195(a)
	Murder of an Unborn Child 3rd Degree	609.2663
9	<u>Assault 1st Degree (Deadly Force Against Official)</u>	<u>609.221, subd. 2</u>
	<u>Assault 1st Degree (Great Bodily Harm)</u>	<u>609.221, subd. 1</u>
	Assault of an Unborn Child 1st Degree	609.267
	Criminal Abuse of Vulnerable Adult (Death)	609.2325, subd. 3(a)(1)
	Death of an Unborn Child in the Commission of Crime	609.268, subd. 1
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(a)
	Kidnapping (Great Bodily Harm)	609.25, subd. 2(2)
	Manslaughter 1st Degree	609.20(1),(2) & (5)
	Manslaughter of an Unborn Child 1st Degree	609.2664(1) & (2)
	Murder 3rd Degree	609.195(b)

Severity Level	Offense Title	Statute Number
9	Tampering with Witness, Aggravated 1st Degree	609.498, subd. 1b
8	Aggravated Robbery 1st Degree	609.245, subd. 1
	Arson 1st Degree	609.561
	Burglary 1st Degree (w/Weapon or Assault)	609.582, 1(b) & (c)
	<u>Child Torture</u>	<u>609.3775</u>
	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	609.2325, subd. 3 (a) (2)
	* * *	
	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, subd. 1e(b) subd. 1e(a)(2) & (3)
* * *		
4	* * *	
	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	609.2325, subd. 3 (a) (3)
	* * *	
3	* * *	
	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	609.66, subd. 1e(a) <u>(1)</u>
	* * *	
	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>609.324, subd. 2(b)</u>
* * *		
A	Criminal Sexual Conduct 1st Degree	609.342
B	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(c)(d)(e)(f)(h) <u>609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)

Severity Level	Offense Title	Statute Number
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) 609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 3(b)
	Sexual Extortion (Penetration)	609.3458, subd. 1(b)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)	617.246, subd. 2(b), 3(b), 4(b)
D	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(a)(b)(g) 609.343, subd. 1a(e)(f)(g)
	Criminal Sexual Conduct 3rd Degree	609.344 subd. 1a(a)(e)(f) or subd. 1a(b) with ref. to subd. 2(1)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	617.246, subd. 2(b), 3(b), 4(b)
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) 609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Sexual Extortion (Contact)	609.3458, subd. 1(a)

Severity Level	Offense Title	Statute Number
E	<u>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>617.247, subd. 4(b)</u>
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1 <u>a</u> (a)(b)(e)(f)
	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	609.3451, subd. 3(<u>b</u>)
	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and <u>36</u> 48 mos. older than Complainant)	609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)
	Indecent Exposure	617.23 subd. 3
	Possession of Child Pornography	617.247, subd. 4(a)
	Solicitation of Children to Engage in Sexual Conduct	609.352, subd. 2
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a
	Surreptitious Observation Device (Minor Victim and Sexual Intent)	609.746, subd. 1(f)
<u>H</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>609.3451, subd. 3(a)</u>
<u>H I</u>	Failure to Register as a Predatory Offender	243.166 subd. 5(b)(c)
* * *		

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Statute Number	Offense Title	Severity Level
* * *		
243.166 subd. 5(b)	Registration of Predatory Offenders	H ↓
243.166 subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent Violations)	H ↓
* * *		
609.221 <u>subd. 1</u>	Assault 1st Degree (Great Bodily Harm)	9
609.221 <u>subd. 2</u>	<u>Assault 1st Degree (Deadly Force Against Official)</u>	<u>9</u>
609.221 <u>subd. 3</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>	<u>10</u>
609.221 <u>subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>11*</u>
* * *		
609.2325 subd. 3 (a) (1)	Criminal Abuse of Vulnerable Adult (Death)	9
609.2325 subd. 3 (a) (2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	8
609.2325 subd. 3 (a) (3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
* * *		
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B*

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

Statute Number	Offense Title	Severity Level
609.322 subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	See Note ¹
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C
609.324 subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution	9
609.324 subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution	5
609.324 subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution	3
<u>609.324 subd. 2(b)</u>	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>3</u>
609.3242 subd. 2(2)	Prostitution Crimes (Gross Misd. Level) Committed in School or Park Zones	1
609.342	Criminal Sexual Conduct 1st Degree	A
<u>609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>	<u>Criminal Sexual Conduct 2nd Degree</u>	<u>B</u>
609.343 subd. 1(a)(b)(g) <u>609.343 subd. 1a(e)(f)(g)</u>	Criminal Sexual Conduct 2nd Degree	D
609.343 subd.1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2nd Degree	B
<u>609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 3rd Degree</u>	<u>C*</u>
609.344 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D
609.344 subd. 1 <u>a</u> (e)(f) or subd. 1 <u>a</u> (b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 36 <u>48</u> mos. older than Complainant)	G

¹ See Guidelines section 2.G to determine the presumptive sentence.

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

Statute Number	Offense Title	Severity Level
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C
<u>609.345 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 4th Degree</u>	<u>E</u>
609.345 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345 subd. 1 <u>a</u> (b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E
<u>609.3451 subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H</u>
609.3451 subd. 3 <u>b</u>	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	F
609.3453	Criminal Sexual Predatory Conduct	See Note ²
<u>609.3458 subd. 1(a)</u>	<u>Sexual Extortion (Contact)</u>	<u>E</u>
<u>609.3458 subd. 1(b)</u>	<u>Sexual Extortion (Penetration)</u>	<u>C</u>
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G*
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G*
* * *		
<u>609.3775</u>	<u>Child Torture</u>	<u>8</u>
* * *		
609.66 subd. 1e(a)(<u>1</u>)	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3
609.66 subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8
* * *		

² See section 2.G.8 to determine the presumptive sentence.

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

Statute Number	Offense Title	Severity Level
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance	E D
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13 14)	D <u>C*</u>
617.247 subd. 3(a)	Dissemination of Child Pornography	E*
617.247 subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 14)	D <u>C*</u>
617.247 subd. 4(a)	Possession of Child Pornography	G
617.247 subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 14)	F <u>E</u>

* * *

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B.** Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

Statute Number	Offense Title
* * *	
609.342, subd. 1	Criminal Sexual Conduct 1st Degree
609.343, subd. 1	Criminal Sexual Conduct 2nd Degree
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree
609.3453	Criminal Sexual Predatory Conduct
<u>609.3458</u>	<u>Sexual Extortion</u>
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Internet or Computer)
609.365	Incest
609.377	Malicious Punishment of Child
<u>609.3775</u>	<u>Child Torture</u>
* * *	
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13 14)
617.247, subd. 3(a)	Dissemination of Child Pornography

Statute Number	Offense Title
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 <u>14</u>)
617.247, subd. 4(a)	Possession of Child Pornography
617.247, subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 <u>14</u>)
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images
624.732, subd. 2	Intentional Release of Harmful Substance
624.7191	Metal Penetrating Bullets
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order

* * *

8. Severe Violent Offense List

Each of the following is a "severe violent offense" within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.282	Labor Trafficking
609.342, subd. 1(c)(d)(e)(f) 609.342, subd. 1(a)(b)(c)(d) (e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(c)(d)(e)(f) 609.343, subd. 1(a)(b)(c)(d) (e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree
609.561, subd. 1 or 2	Arson 1st Degree

Statute Number	Offense Title
609.66, subd. 1e(b) subd. 1e(a)(2) & (3)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

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.

- Presumptive disposition. Commitment.
- Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.
- Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minn. Stat. § 609.17 and conspiracies under Minn. Stat. § 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See section 2.G for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

Statute	Offense	Prerequisite or Conditions	Minimum Duration
152.021	Controlled Substance Crime 1st Degree	Prior felony conviction under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense.	48 Months
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense.	36 Months
169A.24, subd. 1(2)	Driving while Intoxicated	Prior Felony DWI	Grid Time
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
243.166, subd. 5(b)	Violation of Predatory Offender Registration		Grid Time

Statute	Offense	Prerequisite or Conditions	Minimum Duration
243.166, subd. 5(c)	Violation of Predatory Offender Registration – Subsequent offense	Prior felony Violation of Predatory Offender Registration	24 Months
609.1095, subd. 3	Dangerous Offender – 3rd Violent Felony	Statute Cited	Grid Time
609.221, subd. 2(b)	Assault 1st Degree, (Deadly Force <u>Against Official</u>) – Peace Officer or Correctional Employee		120 Months
<u>609.221, subd. 3</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>		<u>180 Months</u>
<u>609.221, subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>		<u>300 Months</u>
609.221, 609.222, 609.223, 609.2231 or 609.224	Assault 1st through 5th Degree	Committed by State prison inmate while confined (609.2232)	Grid Time, Consecutive
609.2231, subd. 3a(b)	Assault 4th Degree	Committed by person committed to the Minnesota Sex Offender Program	Grid Time
609.3455, subd. 3a	Dangerous (Engrained) Sex Offender	Statute Cited	At least double the Grid Time
609.485	Escape	Escape from executed sentence	Grid Time
609.582, subd. 1(a)	Burglary 1st Degree	Prior felony burglary	Grid Time*

* * *

* Presumptive commitment per Guidelines section 2.C.

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.221, subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	11	<u>360</u>	<u>CHS 0 (upper-range)</u>
609.2231, subd. 4(b)	Assault 4th Degree Motivated by Bias	1	12, and 1 Day	CHS 3
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
<u>609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 3rd Degree</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS 4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS 4
609.4751, subd. 3	Impersonating a Peace Officer	2	24	CHS 6 (upper-range)
609.485, subd. 4(a)(2)	Escape, Mental Illness	1	12, and 1 Day	CHS 3
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1	12, and 1 Day	CHS 3
609.595, subd. 1a(a)	Damage to Prop Motivated by Bias	1	12, and 1 Day	CHS 3
609.597, subd. 3(3)	Assaulting or Harming Police Horse	1	12, and 1 Day	CHS 3

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1	12, and 1 Day	CHS 3
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1	12, and 1 Day	CHS 3
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)	G	48	CHS 5
609.776	Interference with Emergency Comm.	5	36	CHS 4
<u>617.246, subd. 2(b)</u> <u>3(b) 4(b)</u>	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>
617.247, subd. 3(a)	Dissemination of Child Pornography	E	84	CHS 5
<u>617.247, subd. 3(b)</u>	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>C</u>	<u>180</u>	<u>CHS 5 (upper-range)</u>

* * *

B. Legislative Amendments to Crime Laws Affecting the Guidelines – 2021 Regular Session

As a result of its review of 2021 Regular Session Laws, the Commission proposes conforming and technical amendments related to Identity Theft in Guidelines sections 5.A and 5.B. These modifications result from [2021 Minn. Laws ch. 25](#). The Commission proposed these modifications at its meeting on June 3, 2021.

The following amendments are proposed to the 2020 Minn. Sentencing Guidelines and Commentary sections 5.A & 5.B:

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
8	Identity Theft (<u>8 or More Direct Victims or Loss Over \$35,000</u>)	609.527, subd. 3(5)
	Identity Theft (Related to Child Pornography)	<u>609.527, subd. 3(6)</u>

* * *

Severity Level	Offense Title	Statute Number
3	Identity Theft (<u>4–7 Direct Victims or Loss Over \$2,500</u>)	609.527, subd. 3(4)

* * *

Severity Level	Offense Title	Statute Number
2	Identity Theft (<u>2–3 Direct Victims or \$501–\$2,500 Loss</u>)	609.527, subd. 3(3)

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.527 subd. 3(3)	Identity Theft (<u>2–3 Direct Victims or \$501–\$2,500 Loss</u>)	2
609.527 subd. 3(4)	Identity Theft (<u>4–7 Direct Victims or Loss Over \$2,500</u>)	3
609.527 subd. 3(5)	Identity Theft (<u>8 or More Direct Victims or Loss Over \$35,000</u>)	8
<u>609.527 subd. 3(6)</u>	<u>Identity Theft (Related to Child Pornography)</u>	<u>8</u>

* * *

C. Technical Correction – Update Conditional Release Statutory Reference

The Commission proposes a technical amendment related to a conditional release statutory reference for assault in the fourth degree against secure treatment facility personnel in Guidelines section 2.E.3. This modification results from a 2015 statutory renumbering ([2015 Minn. Laws ch. 23](#)). The Commission proposed this modification at its meeting on April 8, 2021.

The following amendments are proposed to the 2020 Minn. Sentencing Guidelines and Commentary section 2.E:

* * *

2. Determining Presumptive Sentences * * *

E. Mandatory Sentences * * *

3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(e)(~~d~~).
- First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
- Child pornography. Minn. Stat. § 617.247, subd. 9.

* * *