

## MEMORANDUM

To: Commission Chair and Members  
From: Nate Reitz, Executive Director  
Date: February 2, 2023  
Subject: **Redefining “Felony”**

This memo provides more detail about a particular aspect of [HF 43/SF 816](#), which was, within the past two weeks, amended in and passed by of the House and Senate crime committees. The point of the bill is to reclaim Minnesota’s policy that a gross misdemeanor is not a felony—a policy that was thrown into confusion by a 1996 change to federal immigration law, which redefined “aggravated felony” to encompass a variety of state offenses for which the term of imprisonment is “at least one year.”<sup>1</sup>

As introduced, the bill accomplished this objective by permitting sentences of no more than 364 days for gross misdemeanors. The term “gross misdemeanor” was not redefined, however, so a 365-day sentence imposed for a felony offense would still have been considered a gross misdemeanor sentence for purposes of [Minn. Stat. § 609.13, subd. 1\(1\)](#). I did not see any Guidelines issues with this approach.

As amended, the bill redefines “felony” to mean a crime for which a sentence of imprisonment for “one year or more” (now “more than one year”) may be imposed. This implicitly redefines “gross misdemeanor,” which is defined as “any crime which is not a felony or misdemeanor,” limiting the term to offenses for which a sentence of imprisonment for less than one year may be imposed.

While the new version of the bill firmly puts gross misdemeanors outside the federal definition of “aggravated felonies,” it also raises Guidelines-related issues that the Commission may wish to consider.

First, the bill’s passage will require several Guidelines amendments. The grids, for example, carry a minimum sentence of a year and a day (“12<sup>1</sup>”), which the Commission may wish to change to one year.

Second, the bill presents some immediate training issues. A judge imposing a 365-day sentence for a felony on the day following the bill’s enactment—the day most of the bill’s provisions take effect—may incorrectly believe the sentence to be a gross misdemeanor sentence, not realizing that the sentence is a felony commitment to the Commissioner of Corrections.

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<sup>1</sup> [Public Law 104–208, Division C, Title II, Subtitle B, § 321 \(Sept. 30, 1996\)](#), amending 8 U.S.C. 1101(a)(43).

Third, the bill raises questions about how to count out-of-state offenses that received a one-year sentence. Under Guidelines section 2.B.5.b, courts are to count an out-of-state offense as a felony “only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence ... .” Absent some sort of change to this policy, a person such as the one described in Comment 2.B.502—who received a 365-day Texas sentence for assault with a dangerous weapon—would receive a felony point, rather than a misdemeanor unit, in criminal history after enactment of the bill.<sup>2</sup>

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<sup>2</sup> If there is a prison-bed impact to this change, it has not been estimated; MSGC was not asked to prepare a fiscal note on the bill.