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Commissioners of the Minnesota Sentencing
Guidelines Commission
658 Cedar Street, Suite G-58
Saint Paul, MN 55155

To the Honorable Commissioners:

Thank you for the opportunity to comment on the Severity Level ranking of each new offense created by Minn. Stat. § 609.467. As you know, my Office's Medicaid Fraud Control Unit (MFCU) is responsible for investigation and prosecuting offenses under this law. See Minn. Stat. § 256B.12; 42 CFR § 1007. I take this responsibility seriously, which is why I led the efforts to change Minnesota laws in order to better hold fraudsters accountable for stealing taxpayer dollars that should be used to provide health care to Minnesota's most vulnerable people.

I write in support of the Commission's prior recommendations to rank offenses at a Severity Level 7, Severity Level 6, and Severity Level 2, respectively. However, I further write with one request: that the Commission consider ranking offenses punishable under Minn. Stat. § 609.467, subd 2(c), the most serious new offense, at a Severity Level 8. This ranking is supported by a comparison of the penalties for this new offense to other similar, newly-enacted crimes and to previously-enacted offenses.

Offenses punishable by Minn. Stat. § 609.467, subd 2(c) cover losses over \$1,000,000. They carry a maximum penalty of 30 years in prison or a \$1,000,000 fine. As the Commissioners are undoubtedly aware, the Legislature enacted this provision with specific and more severe penalties than any prior theft laws. And that makes sense. Because of this substantially higher threshold, this provision will apply to a very narrow, rare class of cases, but those with especially egregious conduct. But when these offenses occur, the Legislature has decided they should carry more severe maximum penalties than other economic crimes.

This Commission should view this unprecedented penalty for economic crimes as an expression of Legislative intent that these Medical Assistance Fraud offenses be treated more seriously and with greater penalties at sentencing than other economic crimes. And it should rank them accordingly to ensure this Legislative intent is met. Here, this means ranking these offenses at a Severity Level 8.

To begin, Minn. Stat. § 609.467, subd 2(c)'s penalty of 30 years in prison for offenses over \$1,000,000 has no comparison with prior economic crimes in Minnesota's criminal code.¹ This deliberate decision by the Legislature to carry a significantly-increased penalty reflects their choice that this economic offense be treated much more seriously than others.

Comparison of another offense enacted last session demonstrates this Legislative choice. This Commission is also set to rank another new economic offense, theft from a vulnerable adult (over \$35,000). The Commission is considering ranking the new theft of a vulnerable adult (over \$35,000) offense at a Severity Level 7. Yet this new theft of a vulnerable adult offense carries a maximum penalty of 25 percent more than a typical theft offense with a value of over \$35,000, which will be far less than the penalties imposed by Minn. Stat. § 609.467, subd 2(c).²

During the same session it enacted this new theft of a vulnerable adult (over \$35,000) offense, the Legislature also enacted Minn. Stat. § 609.467, a Medical Assistance Fraud offense with a maximum penalty of 30 years in prison and a maximum fine of \$1,000,000. This is a deliberate decision to penalize Medical Assistance Fraud more severely than theft from a vulnerable adult. With the Commission considering ranking theft from a vulnerable adult (over \$35,000) at a Severity Level 7, it should, in turn, consider the Legislature's distinction in penalties meaningful. This should lead it to rank the Medical Assistance Fraud offenses punishable under Minn. Stat. § 609.467, subd 2(c) at a Severity Level 8.

Outside of this request, I support the Commission's recommendations to rank offenses punishable under Minn. Stat. § 609.467, subd 2(b) at a Severity Level 6, and offense punishable under Minn. Stat. § 609.467, subd 2(a) at a Severity Level 2.

The new Medical Assistance Fraud offenses punishable under Minn. Stat. § 609.467, subd 2(b) carry a maximum penalty of 20 years in prison or payment of a fine of not more than \$100,000. In previous iterations of theft offenses with a 20 year maximum penalty, the commission has regularly ranked these offenses as a severity level 6. With the Legislature's deliberate choice to match this penalty level of prior severity level 6 offenses, this commission should rank them the same here.

¹ Indeed, this maximum penalty exceeds the maximum penalty for every offense ranked at a Severity Level 7, and for nearly every offense ranked at a Severity Level 8.

² The typical offense carries a maximum penalty of 20 years in prison and a \$100,000 fine, meaning the enhanced penalty associated with the theft from a vulnerable adult carries a maximum penalty of 25 years in prison and a \$125,000 fine.

Finally, I support the Commission ranking offenses punishable under Minn. Stat. § 609.467, subd 2(a) at either a Severity Level 2 or Severity Level 3. As the Commission has previously noted, these offenses cover a wide range of economic losses. At the Commission's recommendation, we attempted to work with the Legislature to have an intermediate penalty level adopted. While the Senate met our request and included the intermediate penalty provision in the version of the Legislation that it passed, the House version did not contain this intermediate penalty provision. And the intermediate penalty provision did not survive the Conference Committee.

I support an amendment to the penalty provisions next session that would include the intermediate penalty that the Commission recommended. It would then be my office's position that the lowest level offenses in the intermediate penalty provision we proposed – under \$10,000 – be ranked at a Severity Level 2, while offense between \$10,000 and \$100,000 be ranked at a Severity Level 3. During the interim period, my office would support the Commission ranking the offense at either level.

If the Commission believes it would be helpful to have a representative from my Office at the Public Comment meeting to discuss any concerns presented in this comment, my office will ensure that Medicaid Fraud Control Unit Director Nick Wanka attends the public meeting.

Thank you for your careful consideration of these important issues.

Sincerely,



KEITH ELLISON
Minnesota Attorney General