

Staff Issue Paper

Refining the Commission's 2026 Recommendations to the Legislature

November 13, 2025

At its October meeting, the Commission discussed a set of possible recommendations to the Legislature¹ and asked staff to draft implementing language. This paper presents the recommendations discussed in October together with draft implementing language.² Staff suggests that the Commission consider making the following eight recommendations to the Legislature:

1. Complete the “mandatory life sentence” list in the presentence investigation statute. 2
2. Reinstate the offense of intentionally inflicting great bodily harm as a type of first-degree assault; adjust relevant statutory maximums. 2
3. Increase the statutory maximum penalty for domestic assault by strangulation. 3
4. Assign a uniform three-year statutory maximum penalty for felony fourth-degree assault. 3
5. Define “demonstrable bodily harm.” 5
6. Increase the statutory maximum penalty for fifth-degree criminal sexual conduct by nonconsensual penetration. 5
7. For criminal vehicular operation resulting in great bodily harm, add a higher penalty tier for recurrent impaired drivers; adjust relevant statutory maximums. 6
8. Apply DWI sentencing and release requirements to criminal vehicular operation and homicide committed by impaired drivers..... 7

With respect to recommendation no. 8: Because of the complexity in applying the DWI penalty provisions to criminal vehicular operation and homicide, an appendix (p. 12) is provided to explain the drafter’s rationale more fully.

¹ See the staff paper entitled, “[Staff-Suggested 2026 Legislative Recommendations](#)” (Oct. 3, 2025).

² There are two differences from October: recommendation no. 1 is new this year, but was previously adopted by the Commission in 2024; and recommendation no. 6 had previously been for a four-year stat. max. and is now for a three-year stat. max., based on staff’s impression that three years was more likely to win consensus than four years.

1. Complete the “mandatory life sentence” list in the presentence investigation statute.

In 2005, the Legislature amended the presentence investigation statute (Minn. Stat. § 609.115) to require the district court to submit a sentencing worksheet to the Sentencing Guidelines Commission whenever someone is convicted of a felony—even when a life sentence is mandatory. The provision contained a list of the mandatory life sentence statutes. Omitted from that list was Minn. Stat. § 609.2661 (first-degree murder of an unborn child), which has carried a mandatory life sentence since 1986. The Commission recommends adding this offense to the list of mandatory life sentences for which the court must submit a sentencing worksheet to MSGC.

Amend Minnesota Statutes 2024, section 609.115, subdivision 2a, to read:

Subd. 2a. **Sentencing worksheet; sentencing guidelines commission.** If the defendant has been convicted of a felony, including a felony for which a mandatory life sentence is required by law, the court shall cause a sentencing worksheet as provided in subdivision 1 to be completed and forwarded to the Sentencing Guidelines Commission.

For the purpose of this section, "mandatory life sentence" means a sentence under section 609.106, subdivision 2; 609.185; 609.2661; 609.3455; 609.385, subdivision 2; or Minnesota Statutes 2004, section 609.109, subdivision 3, and governed by section 244.05.

2. Reinstate the offense of intentionally inflicting great bodily harm as a type of first-degree assault; adjust relevant statutory maximums.

The most common form of first-degree assault—assault resulting in great bodily harm—requires the intent to inflict bodily harm (or to cause fear); the assailant need not have intended to cause the great bodily harm. Recognizing that the crime is more serious if the assailant *did* intend to inflict the great bodily harm, the Commission recommends that the Legislature reinstate the offense of intentionally inflicting great bodily harm (an offense that existed between 1963 and 1969) and assign it a 20-year statutory maximum penalty. If enacted, the Commission intends to rank the new first-degree assault crime at severity level 9.

The Commission further recommends that the Legislature reduce the maximum penalty for assault resulting in great bodily harm—which is now ranked at severity level 9 but which the Commission is proposing to be ranked at severity level 8—from 20 years’ to 15 years’ imprisonment.

Amend Minnesota Statutes 2024, section 609.221, subdivision 1, to read:

Subdivision 1. **Great bodily harm.** ~~Whoever~~ (a) Except as otherwise provided in this section, whoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$25,000, or both.

(b) Except as otherwise provided in subdivisions 3 and 4, whoever intentionally inflicts great bodily harm upon another may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both.³

³ As briefly discussed at the October meeting, it is the Legislature’s general practice to assign the same statutory maximums to crimes resulting in the death of an unborn child, and to crimes involving injury to an unborn child subsequently born alive, as it assigns to the parallel offenses involving ordinary death or injury. Likewise, it is the Commission’s practice to rank

3. Increase the statutory maximum penalty for domestic assault by strangulation.

The Commission is proposing to rank domestic assault by strangulation, now ranked at severity level 4, at severity level 5. To accommodate the higher severity level, the Commission recommends that the Legislature increase the statutory maximum penalty from three years to five years.

Amend Minnesota Statutes 2024, section 609.2247, subdivision 2, to read:

Subd. 2. **Crime.** Unless a greater penalty is provided elsewhere, whoever assaults a family or household member by strangulation is guilty of a felony and may be sentenced to imprisonment for not more than ~~three~~ five years or to payment of a fine of not more than ~~\$5,000, \$10,000,~~ or both.

4. Assign a uniform three-year statutory maximum penalty for felony fourth-degree assault.

There are several felony fourth-degree assault crimes. Although all are now ranked at severity level 1, they have various statutory maximums ranging from a year and a day to three years. The Commission is proposing to increase the severity rankings of these offenses to severity level 3. To accommodate these increases, the Commission recommends that the Legislature adopt a uniform three-year statutory maximum penalty for all felony fourth-degree assault crimes.

Amend Minnesota Statutes 2024, section 609.2231, subdivision 3, to read:

Subd. 3. **Correctional employees; prosecuting attorneys; judges; probation officers.** Whoever commits either of the following acts against an employee of a correctional facility as defined in section 241.021, subdivision 1i, against a prosecuting attorney as defined in section 609.221, subdivision 6, clause (4), against a judge as defined in section 609.221, subdivision 6, clause (5), or against a probation officer or other qualified person employed in supervising offenders while the person is engaged in the performance of a duty imposed by law, policy, or rule is guilty of a felony and may be sentenced to imprisonment for not more than ~~two~~ three years or to payment of a fine of not more than ~~\$4,000, \$6,000,~~ or both:

- (1) assaults the person and inflicts demonstrable bodily harm; or
- (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the person.

the parallel offenses identically. In the case of first-degree assault, however, the Legislature has assigned a lower statutory maximum to the crime of assaulting a pregnant woman and inflicting great bodily harm on an unborn child subsequently born alive (15 years, Minn. Stat. § 609.267) than to the ordinary first-degree assault crime of assaulting another and inflicting great bodily harm (20 years, § 609.221, subd. 1). For this reason, draft language amending § 609.267 is not included with the recommendation. If the Commission did wish to recommend amending § 609.267, staff would suggest the following language:

Amend Minnesota Statutes 2024, section 609.267, to read:

609.267 ASSAULT OF UNBORN CHILD IN THE FIRST DEGREE.

~~Whoever~~ (a) Except as otherwise provided in paragraph (b), whoever assaults a pregnant woman and inflicts great bodily harm on an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than 10 years or to a payment of a fine of not more than \$25,000, or both.

(b) Whoever intentionally inflicts great bodily harm upon an unborn child who is subsequently born alive may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

Amend Minnesota Statutes 2024, section 609.2231, subdivision 3a, to read:

Subd. 3a. **Secure treatment facility personnel.** (a) As used in this subdivision, "secure treatment facility" includes facilities listed in sections 253B.02, subdivision 18a, and 253D.02, subdivision 13.

(b) Whoever, while committed under chapter 253D, Minnesota Statutes 2012, section 253B.185, or Minnesota Statutes 1992, section 526.10, commits either of the following acts against an employee or other individual who provides care or treatment at a secure treatment facility while the person is engaged in the performance of a duty imposed by law, policy, or rule is guilty of a felony and may be sentenced to imprisonment for not more than ~~two~~ three years or to payment of a fine of not more than ~~\$4,000~~, \$6,000, or both:

- (1) assaults the person and inflicts demonstrable bodily harm; or
- (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the person.

(c) Whoever, while committed under section 253B.18, or admitted under the provision of section 253B.10, subdivision 1, commits either of the following acts against an employee or other individual who supervises and works directly with patients at a secure treatment facility while the person is engaged in the performance of a duty imposed by law, policy, or rule, is guilty of a felony and may be sentenced to imprisonment for not more than ~~two~~ three years or to payment of a fine of not more than ~~\$4,000~~, \$6,000, or both:

- (1) assaults the person and inflicts demonstrable bodily harm; or
- (2) intentionally throws or otherwise transfers urine, blood, semen, or feces onto the person.

(d) The court shall commit a person convicted of violating paragraph (b) to the custody of the commissioner of corrections for not less than one year and one day. The court may not, on its own motion or the prosecutor's motion, sentence a person without regard to this paragraph. A person convicted and sentenced as required by this paragraph is not eligible for probation, parole, discharge, work release, or supervised release, until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

(e) Notwithstanding the statutory maximum sentence provided in paragraph (b), when a court sentences a person to the custody of the commissioner of corrections for a violation of paragraph (b), the court shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for five years. The terms of conditional release are governed by sections 244.05 and 609.3455, subdivision 6, 7, or 8; and Minnesota Statutes 2004, section 609.109.

Amend Minnesota Statutes 2024, section 609.2231, subdivision 4, to read:

Subd. 4. **Assaults motivated by bias.** (a) Whoever assaults another in whole or in substantial part because of the victim's or another's actual or perceived race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, age, national origin, or disability as defined in section 363A.03, or because of the victim's actual or perceived association with another person or group of a certain actual or perceived race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, age, national origin, or disability as defined in section 363A.03, may be sentenced to imprisonment for not more than 364 days or to payment of a fine of not more than \$3,000, or both.

(b) Whoever violates the provisions of paragraph (a) within five years of a previous conviction under paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than ~~one year and a day~~ three years or to payment of a fine of not more than ~~\$3,000~~, \$6,000, or both.

5. Define “demonstrable bodily harm.”

Although the term “bodily harm” is statutorily defined, the term “demonstrable bodily harm” is not. The latter term is used chiefly in the fourth-degree assault statute, which generally requires the bodily harm resulting from an assault to be demonstrable for the assault to qualify as a gross misdemeanor or felony. The Commission recommends that the Legislature define the term as the court of appeals has done: bodily harm that is capable of being perceived by another.

Amend Minnesota Statutes 2024, section 609.02, by adding a subdivision to read:

Subd. 7b. **Demonstrable bodily harm.** “Demonstrable bodily harm” means bodily harm that is capable of being perceived by another.

6. Increase the statutory maximum penalty for fifth-degree criminal sexual conduct by nonconsensual penetration.

In 2021, when it created the felony crime of fifth-degree criminal sexual conduct by nonconsensual penetration, the Legislature assigned the crime a two-year statutory maximum penalty. Unwilling to rank the offense below failure to register as a predatory offender—the lowest offense on the Sex Offender Grid—the 2021 Commission ranked the new offense at a new severity level H, just above the severity level assigned to failure to register as a predatory offender, and with similar durations. Due to the two-year statutory maximum penalty, however, all durations at higher criminal history scores are constrained at 24 months, leaving the district court without the statutorily required sentencing range. To accommodate the Commission’s ranking of this offense at severity level H, the Commission respectfully recommends that the Legislature increase the statutory maximum penalty to three years.

Amend Minnesota Statutes 2024, section 609.3451, subdivision 3, to read:

Subd. 3. **Felony.** (a) A person is guilty of a felony and may be sentenced to imprisonment for not more than ~~two~~ three years or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1.

(b) A person is guilty of a felony and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both, if the person violates subdivision 1 or 1a within ten years of:

(1) a conviction under subdivision 1;

(2) a previous conviction for violating subdivision 1a, clause (2), a crime described in paragraph (c), or a statute from another state in conformity with any of these offenses; or

(3) the first of two or more previous convictions for violating subdivision 1a, clause (1), or a statute from another state in conformity with this offense.

(c) A previous conviction for violating section 609.342; 609.343; 609.344; 609.345; 609.3453; 617.23, subdivision 2, clause (2), or subdivision 3; or 617.247 may be used to enhance a criminal penalty as provided in paragraph (b).

7. For criminal vehicular operation resulting in great bodily harm, add a higher penalty tier for recurrent impaired drivers; adjust relevant statutory maximums.

The offense of criminal vehicular homicide has a 50-percent higher statutory maximum if the impaired driver caused the death within ten years of a “qualified prior driving offense”—*i.e.*, a prior conviction for first- or second-degree DWI or a substance-related criminal vehicular operation or homicide. In the same way, the Commission recommends creating a higher penalty tier for criminal vehicular operation if the impaired driver caused great bodily harm within ten years of a qualified prior driving offense. If enacted, the Commission intends to rank the higher-penalty offense at severity level 8.

The Commission further recommends that the Legislature increase the statutory maximum penalty for criminal vehicular operation resulting in great bodily harm—now ranked at severity level 5, but proposed to be ranked, for offenses committed while grossly negligent or impaired, at severity level 6—from five years to seven years. This increase is necessary to accommodate the Commission’s proposed increase in the severity-level ranking.

Amend Minnesota Statutes 2024, section 609.2113, subdivision 1, to read:

Subdivision 1. **Great bodily harm.** A (a) Except as provided in paragraph (b), a person is guilty of criminal vehicular operation resulting in great bodily harm and may be sentenced to imprisonment for not more than ~~five~~ seven years or to payment of a fine of not more than \$10,000, or both, if the person causes great bodily harm to another not constituting attempted murder or assault as a result of operating a motor vehicle:

- (1) in a grossly negligent manner;
- (2) in a negligent manner while under the influence of:
 - (i) alcohol;
 - (ii) a controlled substance;
 - (iii) cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, artificially derived cannabinoids, or tetrahydrocannabinols; or
 - (iv) any combination of those elements;
- (3) while having an alcohol concentration of 0.08 or more;
- (4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;
- (5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, artificially derived cannabinoids, or tetrahydrocannabinols, is present in the person's body;
- (7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6; or
- (8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken,

the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

(b) If a person is sentenced under paragraph (a) for a violation under paragraph (a), clauses (2) to (6), occurring within ten years of a qualified prior driving offense, the statutory maximum sentence of imprisonment is ten years.

Amend Minnesota Statutes 2024, section 609.2114, subdivision 2, to read:

Subd. 2. **Injury to an unborn child.** A (a) Except as provided in paragraph (b), a person is guilty of criminal vehicular operation resulting in injury to an unborn child and may be sentenced to imprisonment for not more than five seven years or to payment of a fine of not more than \$10,000, or both, if the person causes the great bodily harm to an unborn child subsequently born alive as a result of operating a motor vehicle:

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of:

(i) alcohol;

(ii) a controlled substance;

(iii) cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, artificially derived cannabinoids, or tetrahydrocannabinols; or

(iv) any combination of those elements;

(3) while having an alcohol concentration of 0.08 or more;

(4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;

(5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, artificially derived cannabinoids, or tetrahydrocannabinols, is present in the person's body;

(7) where the driver who causes the accident leaves the scene of the accident in violation of section 169.09, subdivision 1 or 6; or

(8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the injury was caused by the defective maintenance.

(b) If a person is sentenced under paragraph (a) for a violation under paragraph (a), clauses (2) to (6), occurring within ten years of a qualified prior driving offense, the statutory maximum sentence of imprisonment is ten years.

8. Apply DWI sentencing and release requirements to criminal vehicular operation and homicide committed by impaired drivers.

Some of the most common criminal vehicular operation and homicide offenses involve driving while impaired. These offenses are, essentially, DWIs resulting in harm or death. When impaired drivers commit criminal vehicular operation and criminal vehicular homicide offenses, the Commission recommends that

the Legislature require, at a minimum, the same pretrial-release conditions, mandatory penalties, probation conditions, long-term monitoring, conditional-release periods, comprehensive-assessment charges, surcharges, and penalty assessments that would have applied if the driver had instead been charged with or convicted of DWI.

Given the complexity of applying the sentencing and release requirements of the Minnesota Impaired Driving Code to criminal vehicular operation and homicide statutes, the Commission would encourage the Legislature to review the following proposed statutory-amendment language thoroughly and make adjustments as necessary to carry out the Commission's intent.

Amend Minnesota Statutes 2024, section 609.2111, to read:

609.2111 DEFINITIONS.

(a) For purposes of sections 609.2111 to ~~609.2114~~ 609.2115, the terms defined in this subdivision have the meanings given them.

(b) "Motor vehicle" has the meaning given in section 609.52, subdivision 1, and includes attached trailers.

(c) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

(d) "Intoxicating substance" has the meaning given in section 169A.03, subdivision 11a.

(e) "Qualified prior driving offense" includes a prior conviction:

(1) for a violation of section 169A.20 under the circumstances described in section 169A.24 or 169A.25;

(2) ~~under section 609.2112, subdivision 1, paragraph (a), clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6); 2, clauses (2) to (6); or 3, clauses (2) to (6); or 609.2114, subdivision 1, paragraph (a), clauses (2) to (6); or 2, clauses (2) to (6); for a substance-related criminal vehicular offense;~~

(3) under Minnesota Statutes 2012, section 609.21, subdivision 1, clauses (2) to (6); or

(4) under Minnesota Statutes 2006, section 609.21, subdivision 1, clauses (2) to (6); 2, clauses (2) to (6); 2a, clauses (2) to (6); 2b, clauses (2) to (6); 3, clauses (2) to (6); or 4, clauses (2) to (6).

(f) "Artificially derived cannabinoid" has the meaning given in section 342.01, subdivision 6.

(g) "Cannabis flower" has the meaning given in section 342.01, subdivision 16.

(h) "Cannabis product" has the meaning given in section 342.01, subdivision 20.

(i) "Hemp-derived consumer product" has the meaning given in section 342.01, subdivision 37.

(j) "Lower-potency hemp edible" has the meaning given in section 342.01, subdivision 50.

(k) "Aggravating factor" has the meaning given in section 169A.03, subdivision 3.

(l) "Qualified prior impaired driving incident" has the meaning given in section 169A.03, subdivision 22.

(m) "Substance-related criminal vehicular offense" means a violation of section 609.2112, subdivision 1, paragraph (a), clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114, subdivision 1, paragraph (a), clauses (2) to (6), or subdivision 2, clauses (2) to (6).

(n) "Superseded or out-of-state criminal vehicular offense" means:

(1) a felony violation of Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6);

(2) a felony violation of Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury, substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to (6); subdivision 2a, clauses (2) to (6); subdivision 3, clauses (2) to (6); or subdivision 4, clauses (2) to (6); or

(3) a violation of a statute from this state or another state in conformity with any provision listed in clause (1) or (2) or with any felony provision listed in paragraph (m).

Add a new section 609.2115, as follows:

[609.2115] SUBSTANCE-RELATED CRIMINAL VEHICULAR OFFENSE; MANDATORY RELEASE CONDITIONS AND MINIMUM PENALTIES.

Subdivision 1. **Release from pretrial detention.** (a) A court may release a person from pretrial detention only if the person agrees to the conditions stated in 169A.44, subdivision 1, paragraph (b), clauses (1) and (2), if the person is charged with committing a substance-related criminal vehicular offense:

(1) while under age 19 when one aggravating factor was present;

(2) when one aggravating factor described in described in section 169A.03, subdivision 3, clause (2) or (3), was present;

(3) when two or more aggravating factors were present;

(4) after a conviction for a violation of section 169A.24;

(5) after a conviction for a felony substance-related criminal vehicular offense or a superseded or out-of-state criminal vehicular offense; or

(6) while the person's driver's license or driving privileges were canceled under section 171.04, subdivision 1, clause (10).

(b) A court may release from pretrial detention a person charged with committing a substance-related criminal vehicular offense within ten years of the first of three or more qualified prior impaired driving incidents only if the court imposes the conditions described in section 169A.44, subdivision 2, paragraph (a).

(c) The court may apply the ignition-interlock exception set forth in section 169A.44, subdivision 3, to a person described in paragraph (a) or (b).

(d) This subdivision does not preclude conditions of release in addition to those described in section 169A.44.

(e) In addition to setting forth conditions of release under this subdivision, if required by court rule, the court shall also fix the amount of money bail without other conditions upon which the defendant may obtain release. If paragraph (a) or (b) applies to a person charged with a gross misdemeanor substance-related criminal vehicular offense, the unconditional bail amount shall be the maximum bail under section 629.471.

Subd. 2. Substance use disorder assessment requirement; charge and surcharge; penalty assessment.

This subdivision applies to a person convicted of a substance-related criminal vehicular offense.

(a) The county agency administering the alcohol safety program described in section 169A.70 must conduct and submit the substance use disorder assessment required by that section as if the person were convicted of an offense described in section 169A.20.

(b) The court, when sentencing the person, must order the person to pay the cost of the substance use disorder assessment and any additional charge or surcharge described in section 169A.284 as if that person were convicted of a violation of section 169A.20. Money collected under this paragraph must be distributed as described in section 169A.284.

(c) If the person had an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the violation, the court, when sentencing the person, may impose a penalty assessment of up to \$1,000. The court may impose this assessment in addition to any other penalties or charges authorized under law. Distribution of this assessment must be made as described in section 169A.285, subdivision 2.

Subd. 3. Stayed sentence. This subdivision applies when a court sentences a person who is convicted of a substance-related criminal vehicular offense to a stayed sentence. Nothing in this subdivision precludes an executed commitment to the commissioner of corrections.

(a) The conditions of the stay must include the condition that the person submit to the level of care recommended in the substance use disorder assessment report required under subdivision 2, paragraph (a). If the court does not order a level of care in accordance with the assessment report recommendation as a condition of probation, it shall state on the record its reasons for not following the assessment report recommendation.

(b) If the person was convicted of the violation within ten years of one or more qualified impaired driving incidents, the mandatory minimum penalties and other provisions of section 169A.275 apply as if the person were convicted of a violation of section 169A.20. This paragraph shall not preclude a stay of imposition or stay of execution of a sentence, in which case the mandatory minimum penalties shall take the form of intermediate sanctions as conditions of probation.

(c) The court shall order any long-term monitoring described in section 169A.277 that would apply if the person were convicted of a violation of section 169A.20.

Subd. 4. Mandatory prison sentence; conditional release. (a) A court must sentence a person convicted of a felony substance-related criminal vehicular offense to imprisonment for not less than three years if the person committed the violation:

(1) within ten years of the first of three or more qualified prior impaired driving incidents;

(2) after having been convicted of a felony under section 169A.24; or

(3) after having been convicted of a felony substance-related criminal vehicular offense or a superseded or out-of-state criminal vehicular offense.

(b) The court may stay execution of this mandatory sentence as provided in subdivision 3, but may not stay imposition or adjudication of the sentence or impose a sentence that has a duration of less than three years.

(c) If the court commits a person to the commissioner of corrections under paragraph (a):

(1) the court shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years as described in section 169A.276, subdivision 1, paragraphs (d) and (e);

(2) the commissioner shall apply the provisions of section 169A.276, subdivision 1, paragraphs (c) to (e), to the person; and

(3) the person is not eligible for release as provided in section 241.26, 244.065, 244.12, or 244.17, unless the person has successfully completed treatment recommendations as determined by a substance use disorder assessment while incarcerated.

(d) The provisions of this subdivision apply notwithstanding the statutory maximum sentence provided for the felony substance-related criminal vehicular offense.

Appendix: Drafter's Notes Regarding Recommendation No. 8: Applying DWI Sentencing & Release Provisions to CVO & CVH While Impaired

The drafter's intent was simple and limited: to apply the existing mandatory pretrial release and penalty provisions from Chapter 169A (DWI) to criminal vehicular operation and homicide offenses committed while under the influence, but only where applicable. As this appendix will explain, in some cases, the CVO/CVH crimes did not always fit well with these mandatory DWI provisions.

The draft language begins with **Minn. Stat. § 609.2112**, which contains the **definitions** that apply to all CVO/CVH offenses. The most significant addition is “**substance-related criminal vehicular offense**,” which is shorthand for all those CVO/CVH provisions that meet the elements of DWI also. (The “substance-related” terminology is borrowed from Minn. Stat. § 169A.24, which uses it to describe historical CVO/CVH statutes that fit this definition.) This term is used extensively.

Also new is “superseded or out-of-state criminal vehicular offense.” This term is used when applying, to the current substance-related criminal vehicular offense, conditions or penalties that are reserved for first-degree DWI. It is only used twice, but it saves a lot of words.

There are three other changes to § 609.2112: The definitions of the terms “aggravating factor” and “qualified prior impaired driving incident” are incorporated from the DWI laws; and the new “substance-related criminal vehicular offense” term is used in another definition to make that definition a little shorter.

Minn. Stat. § 609.2115 is proposed to be a new section of law. This is where the DWI sentencing and release provisions are applied to CVO/CVH while impaired.

Subdivision 1 incorporates Minn. Stat. § 169A.44, which requires **pretrial release** conditions applicable to those charged with felony DWI and certain nonfelony DWIs (2nd degree, teenage 3rd degree, aggravated, and where the person's license has been canceled as inimical to public safety). Such persons must be arrested and held pending their first court appearance (§ 169A.40). This draft incorporates most of the provisions of § 169A.44 except the minimum bail alternative requirement.

For gross misdemeanor CVO, the draft requires the statutory maximum bail amount as an alternative bail requirement, just as § 169A.44 does for gross misdemeanor DWI. Note, however, that § 629.471 is not amended to increase the maximum bail for gross misdemeanor CVO to four times the fine, as the Legislature has done with gross misdemeanor DWI.

Other than Minn. Stat. § 169A.28 (consecutive sentences; see note below), these provisions (Minn. Stat. §§ 169A.40 & 169A.44) were the most difficult provisions to fit with the CVO/CVH statutory scheme. Reasonable Commission members may take a different approach than the drafter's; perhaps subdivision 1 could be left out altogether. After all, the charging authority is welcome to charge the underlying DWI offense for the purpose of obtaining § 169A.44's bail requirements.

Subdivision 2 applies upon **conviction**. **Subd. 2(a) & (b)** require and fund a **substance use disorder assessment**, just like any other DWI (from § 169A.70).

Subd. 2(c) applies an optional penalty assessment of **up to \$1,000** for convicted defendants whose alcohol concentration was **twice the legal limit** to CVO/CVH cases (from § 169A.285).

Subdivision 3 applies only to **stayed sentences**.

Subd. 3(a) requires that the court, at sentencing, order the level of care (*i.e.*, **treatment**) recommended in the substance use disorder assessment required above. This is modeled after § 169A.283, but it excludes language in that statute that implies that a stay of imposition is not permissible.

Subd. 3(b) generally incorporates § 169A.275, which carries **escalating mandatory minimum penalties** based on the number of priors the driver has. There's also an ignition-interlock alternative. Again, there's language here that implies that all sentences must be imposed sentences, which doesn't fit well in the CVO/CVH context (where most offenses are felonies), so a stay of imposition is explicitly allowed.

Subd. 3(c) incorporates § 169A.277, which requires **long-term monitoring** for DWI defendants with certain records.

Subd. 4(a) provides a required minimum **three-year pronounced prison** sentence if the felony CVO/CVH was committed by someone with a lengthy enough record to qualify for felony DWI treatment. **Subd. 4(b)** allows for the possibility of a **stay of execution**, but not a stay of imposition. If such a defendant is imprisoned, however, **subd. 4(c)** requires a **five-year conditional release** period after release from prison. **Subd. 4(d)** explains that these three- and five-year provisions apply even if they bump up against the CVO's **statutory maximum**. All these provisions are modeled after § 169A.276.

This draft **does not** attempt to incorporate Minn. Stat. § 169A.28 (**consecutive sentences**). Attempting to incorporate this statute's consecutive-sentencing scheme with the significantly different CVO/CVH statutory scheme proved difficult, and felony CVO/CVH offenses are already on the list of offenses eligible for permissive consecutive sentencing.