

## 2025 Regular Session Laws

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# Possible Modifications to the Sentencing Guidelines and Commentary

### June 2, 2025 Update

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § 244.09, subd. 11, the Commission may make such modifications without advance submission to the Legislature. This paper reviews crime legislation created or amended in the 2025 Regular Session that the Commission should review for ranking and other decisions.

Unless the Commission specifies otherwise, it is understood that any modifications adopted by the Commission on June 5, 2025, will be subject to a public hearing on July 17 and to the Commission’s final action on July 24, 2025. It is also understood that, unless otherwise specified, the effective date of all modifications is August 1, 2025, to apply as provided in Guidelines section 3.G.

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*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.*

## Assigning Severity-Level Rankings (In General)

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One of the responsibilities of the Commission is to assign severity-level rankings to new offenses and to consider whether they should be added to the Guidelines' offense lists (*e.g.*, offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm typically caused by the offense and the typical culpability of the defendant. Other considerations are the statutory maximum penalties and how similar offenses are ranked. An alternative to ranking is leaving the offense unranked and allowing the court to assign a severity level on a case-by-case basis. Unranked offenses typically are: 1) Rarely prosecuted; 2) Cover a wide range of underlying conduct; 3) Are new and the severity of a typical offense cannot yet be determined.<sup>1</sup>

For new and amended offenses listed below, the Commission may decide:

1. What severity level (SL) should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Are there other modifications that must be made to the Guidelines?

### A. Ranking New and Amended Crimes

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Staff recommends that the Commission consider making offense rankings and other Guidelines modifications in response to the creation of the following new crime.

#### 1. New Order for Protection Against Financial Exploitation of a Vulnerable Adult

2025 Minn. Laws. ch. 35, art. 11, § 16.

**Description:** The act enacts Minn. Stat. § 609.2334 (Order for protection against financial exploitation of a vulnerable adult) and imposes criminal penalties for violations of an order.

Under subdivision 13 (Violation of an order for protection), a person is guilty of a misdemeanor if the person knows of the existence of an order, is prohibited from direct or indirect contact with the vulnerable adult or restrained from committing acts of financial exploitation and violates the order by committing such conduct. A subsequent violation within ten years of a previous conviction is a gross misdemeanor. A subsequent violation following two prior convictions under this section or under Minn. Stat. § 609.2335 (Financial Exploitation of Vulnerable Adult) within ten years is a felony with a statutory maximum of five years or to payment of a fine of not more than \$10,000, or both.

**Effective date:** January 1, 2026. It is assumed that it applies to crimes committed on or after that date.

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<sup>1</sup> Comment 2.A.04. 2022 Minn. Sentencing Guidelines and Commentary at [https://mn.gov/sentencing-guidelines/assets/1August2022MinnSentencingGuidelinesCommentary\\_tcm30-536102.pdf](https://mn.gov/sentencing-guidelines/assets/1August2022MinnSentencingGuidelinesCommentary_tcm30-536102.pdf).

**References:** Minn. Stat. § [609.2335](#) (2024).

**Long-Term Fiscal Impact (S.F. 2146-0):** Negligible.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** Felony violations of domestic abuse no contact orders, orders for protection, and harassment restraining orders have statutory maximums of five years and are ranked at SL 4. Additionally, Minn. Stat. § 609.2335 (financial exploitation of a vulnerable adult \$5,000 or less) has a statutory maximum of five years and is ranked at SL 4.

**Staff Recommendation:** Rank the new offense at SL 4, effective January 1, 2026, given that other violations of protection orders and financial exploitation of a vulnerable adult under \$5,000 are ranked at SL 4.

These recommendations, as applied to the Sentencing Guidelines, are shown below.

*Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Section 5, as follows:*

\* \* \*

**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
4	* * *	
	<u>Violation of a Financial Exploitation Protective Order</u>	<u>609.2334, subd. 13(c)</u>
	* * *	

**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
* * *		
<u>609.2334 subd. 13(c)</u>	<u>Violation of a Financial Exploitation Protective Order</u>	<u>4</u>

Statute Number	Offense Title	Severity Level
* * *		

## 2. New Anti-Kickback Offense – Unauthorized Human Services Renumerations

[2025 Minn. Laws. ch. 38, art. 5, § 32.](#)

**Description:** This act enacts a new anti-kickback offense under Minn. Stat. § 609.542 (Illegal Renumerations) related to federal healthcare programs, state behavioral healthcare programs, or state childcare programs. Criminal acts include soliciting, receiving, offering, or providing an illegal remuneration—that is, money, a discount, a credit, a waiver, a rebate, a good, a service, employment, or anything else of value in return for doing, or to induce, any of the following:

- A referral for furnishing or arranging for the furnishing of an item or service under a covered program;
- A purchase, lease, or order for any good, facility, service, or item—or arranging the same—for which some payment under a covered program may be made; or
- An application for or receipt of any item or service for which some payment under a covered program may be made.

The act incorporates the federal exceptions to the federal anti-kickback law, as well as bona fide wages or statutorily permitted discounts, scholarships, or financial assistance in connection with childcare.

Three felony tiers are established. The first tier, with a 5-year, \$10,000 maximum penalty, applies to kickbacks of \$5,000 or less. The value may be aggregated over a six-month period, even if in different counties. The second tier, with a 10-year, \$20,000 maximum penalty, applies to kickbacks of over \$5,000. The value may be aggregated over a six-month period. The third tier, with a 20-year, \$100,000 maximum penalty, applies to fraudulent medical-assistance funds claims of over \$35,000. The value may be aggregated over a six-month period, even if in different counties.

In a closely related change, Minn. Stat. § 256.98 (Wrongfully Obtaining Public Assistance) is amended by [2025 Minn. Laws. ch. 38, art. 5, § 27](#), to include offering, providing, soliciting, or receiving illegal remuneration in violation of the new § 609.542.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [256.98](#) (2024).

**Long-Term Fiscal Impact (H.F. 9051-0 (inactive)):** Negligible.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** Wrongfully obtaining public assistance (Minn. Stat. § 256.98) is ranked at either SL 3 or SL 2, depending on whether the loss exceeds \$5,000 or not. In the case of medical assistance fraud (§ 609.466), the Commission has assigned a third punishment tier, SL 6, for amounts exceeding \$35,000, although the direct statutory support for this tier is unclear (perhaps connected to

Minn. Stat. § 609.52, subd. 2(a)(3)(iii) and 3(1)). Because the act permits the same misbehavior to be prosecuted under either Minn. Stat. § 256.98 (Wrongfully Obtaining Public Assistance) or § 609.542 (Illegal Renumerations), a similar penalty structure may be prudent, albeit with the third punishment tier specified in § 609.542.

**Staff Recommendation:** Rank the new anti-kickback offenses similarly to the existing wrongfully obtaining public assistance and medical assistance fraud offenses. At SL 2 (\$5,000 or less), cases with a criminal history score of 6 or more are recommended prison sentences. At SL 3 (over \$5,000), cases with a criminal history score of 4 or more are recommended prison sentences. At SL 6 (over \$35,000), cases with a criminal history score of 3 or more are recommended prison sentences.

These recommendations, as applied to the Sentencing Guidelines, are shown below.

*Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Section 5, as follows:*

\* \* \*

**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
6	* * *	
	<u>Unauthorized Human Services Renumerations (Over \$35,000)</u>	<u>609.542, subd. 4(1)</u>
3	* * *	
	<u>Unauthorized Human Services Renumerations (Over \$5,000)</u>	<u>609.542, subd. 4(2)</u>
2	* * *	
	<u>Unauthorized Human Services Renumerations (\$5,000 or Less)</u>	<u>609.542, subd. 4(3)</u>
	* * *	

**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
* * *		
609.542 subd. 4(1)	<u>Unauthorized Human Services Renumerations (Over \$35,000)</u>	<u>6</u>
<u>609.542 subd. 4(2)</u>	<u>Unauthorized Human Services Renumerations (Over \$5,000)</u>	<u>3</u>
<u>609.542 subd. 4(3)</u>	<u>Unauthorized Human Services Renumerations (\$5,000 or Less)</u>	<u>2</u>
* * *		

## B. Other Conforming Changes

Staff recommends that the Commission consider making Guidelines modifications in response to, or in conformity with, the following legislative changes.

### 1. New Fentanyl Exposure Criminal Penalties

[2025 Minn. Laws. ch. 35, art. 4, § 6.](#)

**Description:** The act adds to Minn. Stat. § 152.137 a new provision, subd. 2(c), which provides a felony penalty (maximum 5 years imprisonment and/or a \$10,000 fine) for permitting a child to inhale, be exposed to, have contact with, or ingest fentanyl.

**Effective date:** August 1, 2025.

**References:** Minn. Stat. § [152.137](#) (2024).

**Long-Term Fiscal Impact (S.F. 456-0):** An eventual need for one additional prison bed, but not in every year.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** The new crime is like the existing offense found in Minn. Stat. § 152.137, subd. 2(b), except that subd. 2(b) includes vulnerable adults along with children and subd. 2(b) concerns methamphetamine, its precursors, and its paraphernalia and subd. 2(c) concerns fentanyl. The existing offense under subd. 2(b) is ranked at Severity Level (SL) D3 in Section 5.

Additionally, Minn. Stat. § 152.137 is one of three exceptions to the *Hernandez* method of sentencing multiple current offense, which requires each offense, after sentencing, to be included in the criminal history for the next offense to be sentenced. The other excluded offenses are burglary (Minn. Stat.

§ 609.585) and kidnapping (Minn. Stat. § 609.251). Each of these offenses has a double-jeopardy exception in law, allowing a defendant to be prosecuted and convicted for more than one crime in a single course of conduct. The exception to the *Hernandez* criminal-history rule applies to both previous court appearances in which there were multiple sentences from the same incident (Guidelines 2.B.1.d(1)) and current court appearances in which there were multiple sentences from the same incident (Guidelines 2.B.1.e(1)).

**Staff Recommendation:** Maintain SL D3 ranking, retitle the offense accordingly, and make conforming changes to the commentary. Assuming the Commission wishes to maintain the exception to the *Hernandez* rule, make no changes to Section 2.B.1.d(1) & 2.B.1.e(1).

These recommendations, as applied to the Sentencing Guidelines, are shown below.

*Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Section 5 and Comment 2.B.108, as follows:*

\* \* \*

## 2. Determining Presumptive Sentences

\* \* \*

### B. Criminal History

\* \* \*

#### 1. Prior Felonies.

\* \* \*

#### d. Assigning Felony Weights – Previous Court Appearances Resulting in Multiple Sentences.

Following are exceptions to including prior felonies in criminal history when multiple felony sentences were imposed in a previous court appearance:

- (1) Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minn. Stats. §§ 152.137, 609.585 or 609.251, include in criminal history only the weight from the offense at the highest severity level.

\* \* \*

- e. Assigning Felony Weights – Current Multiple Sentences. Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced (also known as “*Hernandizing*”) except as follows:

- (1) Single Course of Conduct / Multiple Sentences. When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minn. Stats. §§ 152.137, 609.585, or 609.251, the conviction and sentence for the “earlier” offense does not increase the criminal history score for the “later” offense.

\* \* \*

**2.B.108.** *The Commission established policies to deal with several specific situations that arise under Minnesota law: a conviction under Minn. Stat. § 152.137, under which ~~offenders~~ those convicted of methamphetamine- and fentanyl-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior; Minn. Stat. § 609.585, under which offenders committing another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony; and a conviction under Minn. Stat. § 609.251 under which offenders who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. §§ 152.137, 609.585, or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.*

*When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minn. Stats. §§ 152.137, 609.585, or 609.251, the conviction and sentence for the “earlier” offense should not increase the criminal history score for the “later” offense.*

**2.B.109.** *The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585, and 609.251. The Commission’s decision not to amend the Sentencing Guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).*

\* \* \*

## 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
D3	* * *	
	Methamphetamine <u>and Fentanyl</u> Crimes Involving Children and Vulnerable Adults	152.137



Severity Level	Offense Title	Statute Number
	* * *	

## 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
	* * *	
152.137	Methamphetamine <u>and Fentanyl</u> Crimes Involving Children and Vulnerable Adults	D3
	* * *	

## 2. New Consecutive Sentence for Assault on Sheriff or Sheriff's Deputy in Jail

[2025 Minn. Laws. ch. 35, art. 4, § 8.](#)

**Description:** The act amends Minn. Stat. § 609.2232 (Consecutive Sentences for Assaults Committed by State Prison Inmates) by adding a new paragraph that applies to inmates of local correctional facilities who commit assaults against a county sheriff or sheriff's deputy. No stay of adjudication is permitted, and the sentence imposed for the assault must be executed and run consecutively to any sentence previously imposed or that may be imposed for any crime or offense for which the person was in custody when the person committed the assault.

The amendment applies to inmates in a local correctional facility in which the victim is a county sheriff or sheriff's deputy and the inmate commits a felony assault in the first-degree under Minn. Stat. section 609.221, felony assault in the second-degree under section 609.222, felony assault in the third-degree under section 609.223, or felony or gross misdemeanor assault in the fourth degree under section 609.2231.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [609.2232](#) (2024).

**Long-Term Fiscal Impact (H.F. 135-1UE):** Less than one bed annually.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** Under the rules of “presumptive consecutive” sentencing (Guidelines 2.F.1.a), consecutive sentencing is presumptive when: (1) the defendant was, at the time of the current offense: (i) serving an executed term of imprisonment, disciplinary confinement, or reimprisonment; or (ii) on escape status from an executed term of imprisonment, disciplinary confinement, or reimprisonment; and (2) the presumptive disposition for the current offense(s) is commitment.

Presumptive consecutive sentencing also applies to defendants who are “prison inmates” serving their term of imprisonment in local correctional facilities. The presumptive disposition for any felony assault committed by a prison inmate serving an executed term of imprisonment is commitment (Guidelines 2.C.3.e). If a prison inmate’s total time to serve would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive (Guidelines 2.F.1.d). When a consecutive sentence is presumptive, a criminal history score (CHS) 1 is applied.

Under the rules of “permissive consecutive” sentencing (Guidelines 2.F.2.a(2)(iv)), if the defendant is convicted of felony assault committed while in a local jail or workhouse, the felony assault conviction may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment as outlined in the general rules in Guidelines section 2.C. When a consecutive sentence is permissive, a CHS 0 is applied.

Currently, Guidelines 2.F.2 does not apply to gross-misdemeanor sentences or to consecutive sentences imposed for offenses against multiple victims pursuant to [\*State v. Rivers\*](#), 787 N.W.2d 206 (Minn. App. 2010).

**Staff Recommendation:** Make assault against a county sheriff or sheriff’s deputy in a local correctional facility presumptive commitment, with such sentences presumed to run consecutively to any unexpired portion of the earlier sentence or that may be imposed, following conviction, for any crime or offense for which the person was in custody when the person committed the assault. Additionally, make conforming changes in Section 2.F so that it is clearer that the disposition for assault on secure treatment facility personnel is always presumptive commitment.

These recommendations, as applied to the Sentencing Guidelines, are shown below.

*Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Sections 2.C, 2.F, and Appendix 1, as follows:*

\* \* \*

## 2. Determining Presumptive Sentences

\* \* \*

### C. Presumptive Sentence

\* \* \*

#### 3. Finding the Presumptive Sentence for Certain Offenses.

\* \* \*

- e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, ~~or~~ assault on secure treatment facility personnel, or assault against a county sheriff or sheriff's deputy in a local correctional facility is commitment. Pursuant to section 2.F.1, it is presumptive for escape from an executed term of imprisonment and for felony assault committed by an inmate serving an executed term of imprisonment to be sentenced consecutively to the offense for which the inmate was confined. The presumptive duration is determined by the presumptive sentencing consecutive policy (see section 2.F.1, Presumptive Consecutive Sentences).

\* \* \*

## **F. Concurrent/Consecutive Sentences**

\* \* \*

### **1. Presumptive Consecutive Sentences.**

\* \* \*

- a. Criteria for Imposing a Presumptive Consecutive Sentence. Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender was, at the time of the current offense:

- (i) serving an executed term of imprisonment, disciplinary confinement, or reimprisonment; ~~or~~
- (ii) on escape status from an executed term of imprisonment, disciplinary confinement, or reimprisonment; or and
- (iii) an inmate of a local correctional facility and the current offense was an assault in the first, second, third, or fourth degree against a county sheriff or sheriff's deputy; and

(2) the presumptive disposition for the current offense(s) is commitment.

- b. Finding the Presumptive Disposition. The presumptive disposition is determined using the criteria in section 2.C. The presumptive disposition for ~~an~~ escape from an executed sentence ~~or for a~~, felony assault committed by an inmate serving an executed term of imprisonment, assault on secure treatment facility personnel, or assault in the first, second, third, or fourth degree against a county sheriff or sheriff's deputy in a local correctional

facility is always commitment.

\* \* \*

2. Permissive Consecutive Sentences.

\* \* \*

- a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section:

\* \* \*

- (2) Other Offenses. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.

\* \* \*

- (iv) Felony Assault in a Local Jail or Workhouse. If the offender is convicted of felony assault committed while in a local jail or workhouse, and the conviction is not already presumptive consecutive as described in section 2.F.1.a(1)(iii), the felony assault conviction may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment as outlined in section 2.C.

\* \* \*

## **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
* * *			
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
<u>609.221, 609.222, 609.223, or 609.2231</u>	<u>Assault 1st through 4th Degree</u>	<u>Committed by an inmate of a local correctional facility against a sheriff or sheriff's deputy (609.2232)</u>	<u>Grid Time, Consecutive</u>
* * *			

### 3. Codified Minimum Sentences for Sex Trafficking

[2025 Minn. Laws. ch. 35, art. 4, § 9.](#)

**Description:** The act amends Minn. Stat. § 609.322, and codifies the presumptive executed sentences for Sex Trafficking which are listed on the Sex Offender Grid in footnote 2. These durations are presumed unless the Guidelines presume a longer executed sentence: (1) an executed sentence of between 77 and 108 months for Sex Trafficking 1st Degree or Aggravated Sex Trafficking 2nd Degree; and (2) an executed sentence of between 123 and 172 months for Aggravated Sex Trafficking 1st Degree. Sentencing a person in a manner other than that described is a departure from the Guidelines.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [609.322](#) (2024).

**Long-Term Fiscal Impact:** None.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** For offenses committed on or after August 1, 2023, Aggravated Sex Trafficking 1st Degree is ranked at Severity Level (SL) A. For SL A, Criminal History Scores 0, 1, & 2, the ranges are 123–172, 133–187, & 143–201, respectively. Sex Trafficking 1st Degree is ranked at SL B, where at Criminal History Score 0, the range is 77–108. The presumptive disposition is commitment for both offenses. The offenses are eligible for consecutive sentences as described in Section 6.

**Staff Recommendation:** The amendment codifies footnote 2 of the Sex Offender Grid; therefore, no changes to grid durations are recommended. The language mirrors that of Minn. Stat. § 609.342, subd. 2(b) and 609.343, subd. 2(b), which the Guidelines regard as statutorily created presumptive sentences, rather than mandatory minimums. Inclusion of these statutorily created presumptive sentences in the existing language of Guidelines 2.G.5 is therefore recommended.

This recommendation, as applied to the Sentencing Guidelines, are shown below.

Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Section 2.G.5, as follows:

\* \* \*

## 2. Determining Presumptive Sentences

\* \* \*

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

\* \* \*

5. Attempt or Conspiracy to Commit Certain Sex Trafficking and Criminal Sexual Conduct in the First or Second Degree Offenses. The Commission regards the following 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 For an attempt or conspiracy to commit an offense to which one of these presumptive sentences applies, 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(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~~. longer:
- a. Minn. Stat. § 609.322, subd. 1(c)(1) (applicable to sex trafficking offenses ranked at severity level B);
- b. Minn. Stat. § 609.322, subd. 1(c)(2) (applicable to Aggravated Sex Trafficking 1st Degree);
- c. Minn. Stat. § 609.342, subd. 2(b) (applicable to Criminal Sexual Conduct 1st Degree); and
- d. Minn. Stat. § 609.343, subd. 2(c) (applicable to Criminal Sexual Conduct 2nd Degree offenses ranked at severity level B).

## 4. Renaming Child Pornography as “Child Sexual Abuse Material”

2025 Minn. Laws. ch. 35, art. 4, § 12, & art. 5, §§ 14 & 17–21.

**Description:** The act amends definitions under Minn. Stat. §§ 617.246 and 617.247, and changes “pornographic work” to “child sexual abuse material.”

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § 617.246; 617.247 (2024).

**Long-Term Fiscal Impact:** Not requested.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** The Sentencing Guidelines do not use the term “pornographic work.” Instead, the Guidelines use the non-statutory term “child pornography.”

**Staff Recommendation:** Make conforming modifications throughout the Guidelines.

These recommendations, as applied to the Sentencing Guidelines, are shown below.

*Possible modifications to 2024 Minn. Sentencing Guidelines & Commentary, Sections 2.E, 4.B, 5, 6, Comment 2.B.105, and Appendix 3, as follows:*

\* \* \*

## 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).
- First- through fourth-degree criminal sexual conduct, sexual extortion, and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6–8.
- Use of minors in sexual performance or child sexual abuse material. Minn. Stat. § 617.246, subd. 7.
- Child ~~pornography~~ sexual abuse material. Minn. Stat. § 617.247, subd. 9.

#### 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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i> )	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
* * *							
<i>CSC 3rd Degree–1a(b) with 2(2) Possession of Child Pornography Sexual Abuse Material Solicit Child for Sexual Conduct</i>	<b>G</b>	15	20	25	30	39 34-46	51 44-60 60 51-60 <sup>3</sup>
* * *							

#### 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 (Related to Child <del>Pornography</del> <u>Sexual Abuse Material</u> )	609.527, subd. 3(6)
	* * *	
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 3(b)
	Sexual Extortion (Penetration)	609.3458, subd. 1(b)
	Sex Trafficking 2nd Degree	609.322, subd. 1a



<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
	Use of Minors in Sexual Performance <u>or Child Sexual Abuse Material</u> (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. 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)
	Use of Minors in Sexual Performance <u>or Child Sexual Abuse Material</u>	617.246, subd. 2(a), 3(a), 4(a)
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u>	617.247, subd. 3(a)
	Sexual Extortion (Contact)	609.3458, subd. 1(a)
	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 4(b)
	* * *	
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 36 mos. older than Complainant)	609.344 subd. 1a(b) with ref. to subd. 2(2)
	Indecent Exposure	617.23 subd. 3
	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u>	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(h)
	* * *	

## 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(6)	Identity Theft (Related to Child <del>Pornography</del> <u>Sexual Abuse Material</u> )	8
* * *		
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance <del>or Child Sexual Abuse Material</del>	D
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance <del>or Child Sexual Abuse Material</del> (Subsequent, by Predatory Offender, or Child Under 14)	C*
617.247 subd. 3(a)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u>	E*
617.247 subd. 3(b)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	C*
617.247 subd. 4(a)	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u>	G
617.247 subd. 4(b)	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	E
* * *		

## 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
* * *	
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance <u>or Child Sexual Abuse Material</u>
617.246, subd. 2(b), 3(b), 4(b)	Use of Minors in Sexual Performance <u>or Child Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)
617.247, subd. 3(a)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u>
617.247, subd. 3(b)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)
617.247, subd. 4(a)	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u>
617.247, subd. 4(b)	Possession of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)
* * *	

**2.B.105.** *If an offense has been repealed, but the elements of that offense have been incorporated into another felony statute, determine the appropriate severity level based on the severity level ranking for the current felony offense containing those similar elements. For example, in 2010, the Legislature recodified violations of domestic abuse no contact orders from Minn. Stat. § 518B.01, subd. 22(d) into Minn. Stat. § 629.75, subd. 2(d). This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table. For example, dissemination of child ~~pornography~~ sexual abuse material under Minn. Stat. § 617.247, subd. 3(a), was unranked until August 1, 2006. It is currently ranked at Severity Level E, and receives a weight of 1½ points.*

\* \* \*

### **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.

<b>Statute</b>	<b>Offense</b>	<b>Severity Level</b>	<b>Statutory Maximum (Months)</b>	<b>Exceeds Statutory Maximum At:</b>
* * *				
617.246, subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance <u>or Child Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	C	180	CHS 5 (upper-range)
617.247, subd. 3(a)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u>	E	84	CHS 5
617.247, subd. 3(b)	Dissemination of Child <del>Pornography</del> <u>Sexual Abuse Material</u> (Subsequent, by Predatory Offender, or Child Under 14)	C	180	CHS 5 (upper-range)
* * *				

## C. Legislative Changes with no Staff-Recommend Guidelines Modifications

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Staff recommends no Guidelines modifications with respect to the following legislative changes. Elements of crimes are changed, however, and the Commission may wish to consider whether Guidelines modifications are nevertheless appropriate.

### 1. Modified Penalty for Assaulting Emergency Personnel

[2025 Minn. Laws. ch. 35, art. 4, § 7.](#)

**Description:** The act amends Minn. Stat. § 609.2231, subd. 2 (assault in the fourth degree against firefighters and emergency medical personnel) by creating a new gross misdemeanor for physically assaulting a firefighter or emergency medical personnel in the performance of their duties. The law also increases the statutory maximum for felony inflicting demonstrable bodily harm on a firefighter or emergency medical personnel from two years to three years.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [609.2231](#) (2024).

**Long-Term Fiscal Impact (S.F. 1329-0):** None.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** Assault in the Fourth Degree (Firefighters and Emergency Medical Personnel) under Minn. Stat. § 609.2231, subd 2, with its current two-year statutory maximum, is ranked at Severity Level (SL) 1. This is the same SL as Assault in the Fourth Degree (Peace Officer) under Minn. Stat. § 609.2231, subd 1(c)(1), which already carries a statutory maximum of three years. The offense is eligible for a consecutive sentence as described in Section 6.

**Staff Recommendation:** Maintain existing SL 1; and keep the offense listed in Section 6 (Offenses Eligible for Permissive Consecutive Sentences).

### 2. Modified Damage or Theft to Telecommunications Equipment

[2025 Minn. Laws. ch. 35, art. 4, § 10.](#)

**Description:** The act amends Minn. Stat. § 609.593 (Damage or Theft to Energy Transmission or Telecommunications Equipment) by extending the crime of damage or theft to telecommunications equipment to include damaging, taking, removing, severing, or breaking machinery, equipment, or fixtures used in the transportation of broadband and cable services. The elements of the crime are expanded to any equipment or fixture to benefit the general public, such as streetlights, street lighting systems, and special lighting systems; electric vehicle charging stations; electronic traffic-control signals and camera systems; and electronic warning or notice signs. The crime is a felony, with a five-year statutory maximum penalty.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [609.593](#) (2024).

**Long-Term Fiscal Impact (S.F. 2904-0):** None.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** Damage or Theft to Energy Transmission or Telecommunications is ranked at Severity Level (SL) 3.

**Staff Recommendation:** Maintain existing SL 3.

### 3. Modified Fictitious Emergency Resulting in Response (“Swatting”)

[2025 Minn. Laws. ch. 35, art. 4, § 11.](#)

**Description:** The act amends Minn. Stat. § 609.78 (Fictitious Emergency Call (Response to Home of Official), and changes “employee of a correctional facility” to “correctional employee.” Minn. Stat. § 609.78 outlaws placing an emergency call and reporting a fictitious emergency with the intent of prompting an emergency police, fire, or medical response (“swatting”).

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [609.78](#) (2024).

**Long-Term Fiscal Impact:** Not requested.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** The base offense is a gross misdemeanor. Fictitious Emergency Call (Response to Home of Official) is a felony ranked at Severity Level (SL) 1, if the site of the intended emergency response is the home of an elected official, judge, prosecutor, newly defined “correctional employee,” or peace officer (subd. 2c). The other severity levels depend on either level of harm or whether it was a subsequent offense as displayed, below.

Statute	Offense Title	Severity Level
609.78 subd. 2a(1)	Fictitious Emergency Call (Great Bodily Harm or Death)	8
609.78 subd. 2a(2)	Fictitious Emergency Call (Substantial Bodily Harm)	3
609.78 subd. 2b(1)	Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	4
609.78 subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	5

609.78 subd. 2c	Fictitious Emergency Call (Response to Home of Official)	1*
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\* 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.

**Staff Recommendation:** Maintain existing SL 1.

#### 4. Added AI-Generated Depictions to Definition of Child Sexual Abuse Material

[2025 Minn. Laws. ch. 35, art. 4, § 12.](#)

**Description:** The act expands the definition of child sexual abuse material under Minn. Stat. § 617.246 to include obscene visual depictions of sexual conduct generated by artificial intelligence involving someone indistinguishable from a real child.

Section 13 (Minn. Stat. § 617.2471) extends limited immunity to online computer services and providers for crimes involving such material.

**Effective date:** August 1, 2025, and applies to crimes committed on or after that date.

**References:** Minn. Stat. § [617.246](#) (2024).

**Long-Term Fiscal Impact (SF 1577, without “obscene”):** No estimate, given potential constitutional challenges in light of U.S. Supreme Court precedent.

**Demographic Impact:** Not applicable.

**Sentencing Guidelines Considerations:** The definition and elements are changed, but there are no direct considerations for the Guidelines.

**Staff Recommendation:** Maintain existing severity levels for all child sexual abuse material offenses.