

## MEMORANDUM

To: Chair and Members of the Minnesota Sentencing Guidelines Commission  
From: Nate Reitz, Executive Director  
Date: July 10, 2025

**Subject: Comments on Proposed Amendments to the Sentencing Guidelines and Commentary**

I respectfully submit the following comments related to your proposed amendments to the Sentencing Guidelines and Commentary dated June 14, 2025. Although your proposed amendments were all originally recommended by staff, I have, after research and reflection, concluded that the proposed amendments can and should be corrected or improved. My new recommendations fall under two broad categories.

First, I recommend making two changes regarding the **new fentanyl exposure crime**.

- Contrary to my June recommendation, I no longer believe the new fentanyl exposure crime should be named together with the existing methamphetamine exposure crime. The differences between the two crimes go beyond methamphetamine and fentanyl: The methamphetamine crime protects more people (vulnerable adults, not just children) and encompasses a broader array of chemical types (including precursors and waste products). For the sake of clarity and accuracy, I now recommend identifying these in the Guidelines as separate crimes with separate names, as shown on pages 3 & 4.
- Section 6 (the list of crimes eligible for permissive consecutive sentencing) should include a reference to the new crime. Corrective language is shown on page 4.

Second, I recommend three changes to how the Guidelines incorporate the **changes to the statute requiring consecutive sentences for assaults on sheriffs' deputies by jail inmates** (new Minn. Stat. § 609.2232(b)).

- My June recommendations incorrectly assumed that new Minn. Stat. § 609.2232(b) always requires a prison commitment. While paragraph (b) does forbid a stay of stay of adjudication or imposition for an assault 1–4 that was committed against a deputy while confined in jail, an executed prison sentence is not required unless clause (b)(1), (b)(2), or (b)(3) applies—and those clauses do not apply unless there has been a sentence for the crime for which the inmate was confined in jail at the time of the assault. The implication that Minn. Stat. § 609.2232(b) always requires a prison commitment should therefore be removed from or clarified in the 2025 Guidelines changes, as shown on pages 5, 6, and 7.

- The new provision in Guidelines 2.F.1.a(1)(iii) was incorrectly drafted. This provision should incorporate new Minn. Stat. § 609.2232(b)(2) into consecutive sentencing policy. (It is not necessary to incorporate new clauses (b)(1) or (b)(3), as the former clause was already covered by existing Guidelines 2.F.1.a(1)(i), and the latter clause does not require consecutive sentencing.) Regrettably, new Guidelines 2.F.1.a(1)(iii) omits the core requirement of clause (2): that “the court imposes an executed sentence for any crime or offense for which the person was in custody when the person committed the assault.” (I understand this provision to require that, prior to the current sentencing, any court must have already imposed an executed sentence for an offense for which the person being sentenced had been in custody at the time of the assault.) A corrected version is submitted on page 6.
- Per my June recommendation, the new entry in Appendix 1 assumes that all provisions of the new Minn. Stat. § 609.3223(b) require consecutive sentencing. As noted in the previous point, however, clause (b)(3) does not require consecutive sentencing. The corrected language on page 7 incorporates appropriate qualifying language.

Accordingly, the pages that follow contain my recommended corrections to items B.1 (New Fentanyl Exposure Criminal Penalties) and B.2 (New Consecutive Sentence for Assault on Sheriff or Sheriff’s Deputy in Jail), as found in the “MSGC Notice of Public Hearing: Proposed Amendments to the Sentencing Guidelines and Commentary,” dated June 16, 2025. Changes to the language therein are reflected in **red text**, with **strikeouts** and **underlines** to indicate language recommended to be stricken or added from the previously adopted Guidelines changes, which is shown in black text. If previously stricken language is now being recommended to be restored, it is simply in **red text** with no **strikeout** or **underlining**. If previously added language is now being recommended to be stricken, it will both be **stricken and underlined in red text**.

### **B.1. New Fentanyl Exposure Criminal Penalties**

*Staff recommendations to the 2024 Minn. Sentencing Guidelines & Commentary, Section 5, Section 6, and Comment 2.B.108, as follows (red text shows corrections recommended by the executive director applied to the notice from June 16, 2025):*

\* \* \*

**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.

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### 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	* * *	
	<del>Methamphetamine and Fentanyl Crimes Involving Children and Vulnerable Adults</del> <u>Exposing a Child or Vulnerable Adult to Methamphetamine or Related Chemicals</u>	152.137, <u>subd. 2(a)(b)</u>
	<u>Exposing a Child to Fentanyl</u>	<u>152.137, subd. 2(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
* * *		
152.137 <u>subd. 2(a)(b)</u>	<del>Methamphetamine and Fentanyl</del> Crimes Involving Children and Vulnerable Adults <u>Exposing a Child or Vulnerable Adult to Methamphetamine or Related Chemicals</u>	D3
<u>152.137 subd. 2(c)</u>	<u>Exposing a Child to Fentanyl</u>	<u>D3</u>
* * *		

## 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
* * *	
152.137 <u>subd. 2(a) &amp; (b)</u>	<del>Methamphetamine Crimes Involving Children and Vulnerable Adults</del> <u>Exposing a Child or Vulnerable Adult to Methamphetamine or Related Chemicals</u>
<u>152.137, subd. 2(c)</u>	<u>Exposing a Child to Fentanyl</u>
* * *	

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

Staff recommendations to the 2024 Minn. Sentencing Guidelines & Commentary, Sections 2.C, 2.F, and Appendix 1, as follows (red text shows corrections recommended by the executive director applied to the notice from June 16, 2025):

\* \* \*

## 2. Determining Presumptive Sentences

\* \* \*

### C. Presumptive Sentence

\* \* \*

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

\* \* \*

- e. Offenses Committed While Confined Under State or Local 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 under the conditions described in Minn. Stat. § 609.2232(b)(1), (b)(2), or (b)(3). 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).

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### 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, prior to the current sentencing, a court had imposed an executed sentence for an offense for which the person being sentenced had been in custody at the time of the assault; 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(a))	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(b)(1), (b)(2), or (b)(3))</u>	<u>Grid Time; Consecutive sentencing may apply</u>
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