

## Sentencing Guidelines Comprehensive Review

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# September Consensus Policy Package Description

October 2, 2025

The following is a staff-drafted description of the consensus policy package from the August meeting, as well as the consensus changes to the Guidelines' Statement of Purpose and Principles from the September meeting. Staff infers that these amendments are part of a "consensus" package, but no formal votes have yet been taken. The implementing text, and a statement of the estimated impact of these changes, are found in separate papers.

## Introduction

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For each felony offense sentenced, the Sentencing Guidelines determine a presumptive sentence, based primarily on two factors: The severity of the offense (represented by the vertical axis on the sentencing grids) and the criminal history score of the person being sentenced (represented by the horizontal axis on the sentencing grids). The Commission proposes several changes to both factors. The Commission proposes these changes as a whole, consensus package, mindful of the changes' various impacts—sometimes offsetting impacts—on each other. The description of the proposed changes to criminal history score calculation follows, while the description of the proposed changes to offense severity begins on page 3. For those proposed changes not involving criminal history or offense severity, the description begins on page 4.

## A. Changes to criminal history score calculation

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There are now four components of the criminal history score:

- prior felonies;
- custody status at the time of the offense;
- prior misdemeanors and gross misdemeanors; and
- prior juvenile adjudications.

As part of its consensus policy package, the Commission proposes changes to each of these components.

### A.1. Prior felonies: Reduce decay period

Over time, a prior felony ceases to be relevant to considerations such as blameworthiness and risk of reoffense, and is therefore removed from criminal history score calculation. The Guidelines implement this

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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.*

principle in its felony decay factor: A prior felony sentence that has reached its expiration or discharge date is no longer included in criminal-history calculation fifteen years after the date of expiration of the prior prison sentence—or, if imprisonment was never executed, fifteen years after the prior sentencing date.

The Commission proposes to reduce the felony decay period from fifteen to ten years.

*The implementing text of this proposal is found primarily on page 4 of the “Text of September Consensus Policy Package” document.*

## **A.2. Custody status at the time of the offense: Convert to a durational modifier**

The Commission proposes to convert custody status from a component of the criminal history score to a durational modifier. Under the proposal, the defendant will receive the same or similar durational consequence for being on custody status at the time of the offense—indeed, for some with very high criminal history scores sentenced for serious offenses, the recommended duration will be greater than the duration now recommended. There will be no dispositional consequence, however: The prison/stayed sentence recommendation will not change due to custody status.

This proposal incorporates two recent appellate court decisions regarding custody status: the proposal disregards custody status arising from misdemeanors, gross misdemeanors, and low-level felonies;<sup>1</sup> and the proposal implicitly includes custody status arising from stay-of-adjudication probation.<sup>2</sup>

*The implementing text of this proposal is found primarily on pages 3, 5–11 (deletions), 22–24 (additions), and 27–32 of the “Text of September Consensus Policy Package” document.*

## **A.3(a) & (b) Prior misdemeanors and gross misdemeanors: Reduce decay period and simplify DWI-related rules**

The Commission proposes to reduce the decay period for prior misdemeanors and gross misdemeanors by a similar percentage as the proposed reduction in the felony decay period: from ten to seven years.<sup>3</sup>

*The implementing text of this proposal is found on page 12 of the “Text of September Consensus Policy Package” document.*

The Commission also proposes to repeal two special rules pertaining to prior misdemeanor and gross misdemeanor DWI: The special two-unit, no-limit DWI rule; and the special rule for counting prior misdemeanor DWIs in the criminal history of a felony DWI. Guidelines 2.B.6 (felony enhancement due to prior misdemeanor or gross misdemeanor convictions) is proposed to be shortened, simplified, and merged with Guidelines 2.B.3 (prior gross misdemeanors and misdemeanors).

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<sup>1</sup> *State v. Beganovic*, 974 N.W.2d 278, 281 (Minn. Ct. App. 2022), *aff’d on other grounds*, 991 N.W.2d 638 (Minn. 2023).

<sup>2</sup> *State v. Woolridge Carter*, 9 N.W.2d 839 (Minn. 2024).

<sup>3</sup> Seven to ten years is a 30% reduction, while fifteen to ten years is similarly a 33% reduction.

*The implementing text of this proposal is found on pages 11–14 and 19–20 of the “Text of September Consensus Policy Package” document.*

#### **A.4. Prior juvenile adjudications: Eliminate**

The Commission proposes to eliminate juvenile points from the criminal history score. Convictions resulting from extended-jurisdiction juvenile (EJJ) or adult-certification proceedings will continue to count among the adult felony points.

*The implementing text of this proposal is found primarily on pages 3, 14–17, and 18 of the “Text of September Consensus Policy Package” document.*

## **B. Changes to offense severity**

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The severity of the offense is represented by the vertical axis on the sentencing grids. The Commission ranks each offense by severity level (SL), which defines where on the vertical axis the offense is placed. As part of its comprehensive review, the Commission looked at several groups of felony offenses. One group was related to vehicular behavior; one group was related to assaults; and two groups, for which the Commission is not proposing ranking changes at this time, were closely related to mandatory-minimum sentences.

As part of its consensus policy package, the Commission proposes to increase the severity level assigned to several offenses; to replace one sentencing modifier with an increased severity-level ranking; and to decrease the severity level assigned to one offense.

*The implementing text of these proposal is found on pages 27 and 33–44 of the “Text of September Consensus Policy Package” document.*

#### **B.1. Increase ranking from SL 6 to SL 7:**

##### **Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)**

The two subdivisions of the second-degree assault statute are now ranked the same. Both subdivisions involve a dangerous weapon, but subdivision 2 additionally requires the infliction of substantial bodily harm. The Commission proposes to increase the severity level assigned to the offense described in subdivision 2.

#### **B.2. Increase ranking from SL 5 to SL 6:**

##### **Criminal Vehicular Operation (Great Bodily Harm; Gross Negligence or While Impaired)**

For a grossly negligent or impaired driver who causes great bodily harm, the Commission proposes increasing the severity level from SL 5 to SL 6, which is where Fleeing a Peace Officer (Great Bodily Harm) is ranked. The Commission proposes no changes in the ranking of Criminal Vehicular Operation (Great Bodily Harm) involving leaving the scene or defective vehicle maintenance.

### **B.3(a) & (b). Increase ranking from SL 4 to SL 5: Assault 3rd Degree (Substantial Bodily Harm) and Domestic Assault by Strangulation**

The Commission proposes to increase the rankings of third-degree assault resulting in substantial bodily harm and domestic assault by strangulation from SL 4 to SL 5. Third-degree assaults involving child abuse, rather than substantial bodily harm, would remain ranked at SL 4.

### **B.4. Increase ranking from SL 1 to SL 3: Assault 4th Degree**

The fourth-degree assault statute covers a variety of assaults against certain protected groups, such as police officers, as well as assaults motivated by bias. The statute generally defines such assaults as gross misdemeanors, but many of the provisions become felonies when demonstrable bodily harm is inflicted, when bodily fluids or feces are weaponized, or—in the case of assault motivated by bias—when the offense occurs within five years of a prior offense. The Commission proposes to increase the rankings of all felony fourth-degree assaults from SL 1 to SL 3.

### **B.5. Replace a sentencing modifier with an increased ranking (from SL 8 to SL 9): Criminal Vehicular Homicide (Qualified Prior Conviction)**

If an impaired driver commits criminal vehicular homicide within ten years of a qualified prior driving offense (*i.e.*, a first- or second-degree DWI, a criminal vehicular homicide while impaired, or a criminal vehicular operation while impaired), the statutory maximum penalty increases from ten to fifteen years. The Commission presently ranks all criminal vehicular homicide at SL 8, but a 50-percent durational increase applies if the driver was impaired and there was a qualified prior driving offense. The Commission proposes to replace the 50-percent modifier with an increased severity ranking, at SL 9.

### **B.6. Reduce ranking from SL 9 to SL 8: Assault 1st Degree (Great Bodily Harm)**

First-degree assault—defined as assault resulting in great bodily harm—is presently ranked at SL 9. The Commission proposes to reduce the severity level to SL 8.

## **C. Other changes**

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### **C.1. Clarifying the Guidelines' purpose and principles**

The Commission proposes to make several changes to its statement of purpose and principles. The changes include defining what is meant by “public safety”; an explanation of proportionate sentence severity; and a discussion of the purpose of the criminal history score.

*The implementing text of this proposal is found on pages 1–3 of the “Text of September Consensus Policy Package” document.*

## **C.2. Clarifying the burden of proving out-of-state offenses**

The Commission proposes to clarify that the burden to prove whether or how to count out-of-state offenses in criminal history is the prosecutor's, not the probation officer's.

*The implementing text of this proposal is found on pages 17–19 of the “Text of September Consensus Policy Package” document.*

## **C.3. Displaying ranges in shaded cells and revising example offenses**

Presently, the Guidelines grids do not display the permissive range (15% below, and 20% above, the presumptive fixed sentence) in shaded cells of the grids, where prison is ordinarily not presumed. The Commission proposes to display the full range in all grid cells.

The Commission also proposes to revise the example offenses on the grids to be more representative of the offenses sentenced at that severity level.

*The implementing text of this proposal is found on pages 21 and 28–32 of the “Text of September Consensus Policy Package” document.*

## **C.4. New departure factor: True first offender**

Finally, the Commission proposes an addition to the nonexclusive list of mitigating factors that judges may use when articulating substantial and compelling reasons for departing from the Sentencing Guidelines' presumptive sentence:

The person being sentenced has no prior criminal conviction or stay of adjudication. A criminal history score of zero is not sufficient to qualify for this factor. This factor is not available if the current offense is ranked at severity level 10 or 11 on the Standard Grid or is on the Sex Offender Grid.

*The implementing text of this proposal is found on page 26 of the “Text of September Consensus Policy Package” document.*