

## Memo

**Date:** 10/05/2026

**To:** Minnesota Sentencing Guidelines Commission

**From:** Kelly Lyn Mitchell, MSGC Chair

### RE: Possible Proposals to Address *Hernandez*-Method Sentencing

*Hernandez* is a method of sentencing in which, when multiple offenses are sentenced in a single sentencing hearing, as each offense is sentenced, the offense is added to a person's criminal history. The higher criminal history score is then used when sentencing the next offense. Minn. Sent. Guidelines § 2.B.1.e (2026). The sentencing method arose from a Supreme Court case issued not long after the Guidelines were enacted. In *Hernandez*, an individual was sentenced on the same day for three convictions based on different offenses not part of the same behavioral incident or course of conduct and involving different victims. *State v. Hernandez*, 311 N.W.2d 478 (Minn. 1981). When the district court imposed sentences for these offenses, it included the earlier sentenced offenses in the criminal history score applicable to sentencing for the latter offenses. The Supreme Court determined that this method of sentencing was appropriate. Hinging its decision on a rationale of judicial economy, the Court stated, "All the court was trying to do was avoid mere formalities and, in the interests of judicial economy, do in one day what the Guidelines allow to be done in three or more days." *Id.* at 481.

### Policy Proposals

The *Hernandez* subcommittee considered six potential options to revise the *Hernandez* policy. The subcommittee narrowed its consideration to Options 3, 5, and 6, but could not reach consensus on how to move forward so all are being forwarded to the Commission. These drafts only include example language for felonies. Parallel language will also be needed to address prior misdemeanors.

**Option 1: Require that the offense must have been sentenced prior to the current sentencing date to be included in criminal history.**

*For multiple sentences imposed on the same day, this option overrides Hernandez and only counts true priors in the criminal history score. However, if this person later recidivates, all convictions incurred on the day those multiple sentences were imposed would be included in the person's criminal history score because they would have been entered prior to the new sentencing date. The rule is very simple, but comments may be required to assist people in understanding it during the initial transition.*

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony conviction and sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence ~~was~~

~~given were entered before the current the day of sentencing in the current case. Sentences that are entered on the same day as the sentencing in the current case or arising from the same behavioral incident are not considered prior convictions.~~

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~~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 609.251251, include in criminal history only the weight from the offense at the highest severity level.~~

~~(2) Single Course of Conduct / Involving Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.~~

~~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) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.~~

**Option 2: Require that the offense must have been sentenced prior to the current sentencing date to be included in criminal history but retain the current limits on priors that were part of a single behavioral incident.**

*This is the same as Option 1 except that it limits how many offenses from a prior multiple sentence event can be counted in criminal history. In Option 1, all could be counted if the person recidivates. In this option, only the most serious offense or offenses relating to two victims from the same behavioral incident can be counted at a later sentencing event. Multiple sentences arising from separate incidents (e.g., multiple thefts), however, can all be counted.*

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony conviction and sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given were entered before the current the day of sentencing in the current case. Sentences that are

entered on the same day as the sentencing in the current case or arising from the same behavioral incident are not considered prior convictions.

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~~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 / Resulting in Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minn. Stats. §§ 152.137, 609.585 or 609.251 or the exceptions listed in Minn. Stat. § 609.035, subd. 1, include in criminal history only the weight from the offense at the highest severity level.~~

~~(2) Single Course of Conduct / Involving Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.~~

~~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 “Hernandezizing”) 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) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.~~

**Option 3: Include in criminal history only those offenses that have been sentenced as of the date of the current offense.**

*This option pins the definition of a prior to the date of the current offense. Any convictions entered as of the date of the offense are included in criminal history. If the person later recidivates, the same rule would hold true. So if, for example, the person committed a new offense the day before the current sentencing event, that offense would not be counted as criminal history at a later sentencing event because the current sentencing had not yet been entered.*

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony conviction and sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given the current sentencing were entered on or before the date of the current offense. Sentences that are entered on the same day as the sentencing in the current case or arising from the same behavioral incident are not considered prior convictions.

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~~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.

~~(2). Single Course of Conduct / Involving Multiple Victims.~~ When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.

~~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) Single Course of Conduct / Multiple Victims.~~ When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.

**Option 4: Treat all the single behavioral incident exceptions the same way by not allowing *Hernandizing* in these cases.**

*This eliminates some of the complexity involved in Hernandizing because all of the exceptions allowing for sentencing multiple offenses arising from the same behavioral incident are treated the say way, but this doesn’t address the issue of first-time offenders having their criminal history increased from 0 to 6+ in a single sentencing event.*

~~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 / Resulting in Multiple Sentences.~~ When multiple sentences for a single course of conduct were imposed under Minn. Stats. §§ 152.137, ~~609.585 or 609.251~~ or the exceptions listed in Minn. Stat. § 609.035, subd. 1, include in criminal history only the weight from the offense at the highest severity level.

(2) Single Course of Conduct /Involving Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.

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 /Resulting in 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~~ or the exceptions listed in Minn. Stat. § 609.035, subd. 1, the conviction and sentence for the “earlier” offense does not increase the criminal history score for the “later” offense.

(2) Single Course of Conduct /Involving Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.

**Option 5: Treat all same behavioral incident exceptions the same way by allowing Hernandizing in all cases but limit the number of offenses that can be *Hernandized*.**

*This greatly simplifies the rule. It strikes a balance with the current rule by continuing to allow the excepted offenses (like felon in possession and kidnapping) to garner criminal history within the same sentencing event, but prevents criminal history from being increased from 0 to 6+ in a single sentencing event. Multiple victims are not addressed separately because they are part of the two additional sentences that can be imposed for single behavioral incident. This option also provides the potential for the criminal history score to be greater if the individual recidivates because at a subsequent sentencing, the two most serious offenses rather than the first two offenses sentenced will be included in criminal history.*

~~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.~~

~~(2) Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.~~

~~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) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.~~

~~d. Assigning Felony Weights – Current Multiple Sentences. When multiple offenses are sentenced at the same time before the same court, as each offense is sentenced, include it in the criminal history on the next offense to be sentenced for up to two offenses.~~

~~e. Assigning Felony Weights – Previous Court Appearances Resulting in Multiple Sentences. When multiple felony sentences were imposed in a previous court appearance, include in criminal history only the weights from up to two offenses at the highest severity levels for which there were both convictions and sentences imposed.~~

**Option 6: Same as Option 5, but allow for up to three offenses to be counted if the person recidivates.**

*This is similar to the last option. But this one allows the use of up to three offenses in criminal history if the person recidivates. The rationale is that the prior rule applied criminal history to up to two offenses, so there logically could have been a third offense sentenced that day. Thus, the premium for recidivating is that all three offenses can be used in criminal history. If more than three were sentenced in the prior sentencing event, only the three most serious comprise criminal history in the subsequent sentencing event.*

~~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.~~

~~(2) Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.~~

~~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) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims weights are given only to the two offenses at the highest severity levels.~~

d. Assigning Felony Weights – Current Multiple Sentences. When multiple offenses are sentenced at the same time before the same court, as each offense is sentenced, include it in the criminal history on the next offense to be sentenced for up to two offenses.

e. Assigning Felony Weights – Previous Court Appearances Resulting in Multiple Sentences. When multiple felony sentences were imposed in a previous court appearance, include in criminal history only the weights from up to three offenses at the highest severity levels for which there were both convictions and sentences imposed.