

Sentencing Guidelines Comprehensive Review

Staff-Suggested 2026 Legislative Recommendations

October 3, 2025

The following are legislative recommendations that, in staff's opinion, have the potential to earn the Commission's consensus prior to the 2026 legislative session. This paper builds on a [document](#) presented at the September meeting, and attempts to incorporate elements of the Commission's discussions at that meeting. One legislative recommendation is entirely new.¹

These staff-suggested recommendations are intended to be paired with the September Consensus Policy Package. Staff infers that the policy package promises to be a "consensus" package, but it must be emphasized that no formal votes have yet been taken.

First, staff suggests recommending that the Legislature add a second, 10-year penalty tier for impaired drivers who inflict great bodily harm² within ten years of a qualified prior driving offense, as that term is statutorily defined, consistent with the pattern of criminal vehicular homicide. Staff suggests that the Commission inform the Legislature of its intent to rank offenses within the scope of the new tier at severity level 8.³

Second, staff suggests recommending the Legislature add a provision generally applicable to all substance-related criminal vehicular homicide and criminal vehicular operation offenses.⁴ For someone charged with such an offense, the new provision would direct the court to apply the provisions of Minn. Stat. § 169A.44 (conditional release) as if the charge was of a violation of Minn. Stat. § 169A.20 (driving while impaired). For someone being sentenced for such an offense, the new provision would direct the sentencing court to apply the provisions of Minn. Stat. §§ 169A.275 (mandatory penalties; nonfelony violations), 169A.276

¹ This is the recommendation concerning Criminal Sexual Conduct 5th Degree (Nonconsensual Sexual Penetration) (see footnote 7 and accompanying text). Staff is suggesting this recommendation now because, when the offense was created in 2021, some Commission members expressed dissatisfaction with the low statutory maximum penalty, and the Commission appears poised to make several other recommendations regarding low statutory maximum penalties at this time.

² Minn. Stat. § 609.2113, subd. 1, clauses (2) to (6), and its counterpart involving great bodily harm to an unborn child who is subsequently born alive, § 609.2114, subd. 2, clauses (2) to (6).

³ Because the qualified prior driving offense must be a first- or second-degree DWI, a criminal vehicular homicide while impaired, or a criminal vehicular operation while impaired, the current offense necessarily meets the elements of first-degree DWI (severity level 7), even without the great bodily harm. Staff suggests severity level 8 in order to exceed the severity level of first-degree DWI and account for the greater harm.

⁴ I.e., Minn. Stat. §§ 609.2112, subd. 1(a)(2)–(6); 609.2113, subds. 1(2)–(6), 2(2)–(6), & 3(2)–(6); and 609.2114, subds. 1(a)(2)–(6) & 2(2)–(6).

(mandatory penalties; felony violations), 169A.277 (long-term monitoring), 169A.28 (consecutive sentences), 169A.283 (stay of execution of sentence), 169A.284 (comprehensive assessment charge; surcharge), and 169A.285 (penalty assessment) as if conviction was of a violation of Minn. Stat. § 169A.20.

Third, staff suggests recommending that the Legislature establish a first-degree assault⁵ offense with an element of intentional infliction of great bodily harm and a 20-year statutory maximum penalty. Staff suggests that the Commission inform the Legislature of its intent to rank the new offense at severity level 9.

Fourth, staff suggests recommending that the Legislature amend Minn. Stat. § 609.02 to define “demonstrable bodily harm” as the court of appeals has done: bodily harm that is capable of being perceived by another.⁶

Fifth, staff suggests recommending that the Legislature change the statutory maximum sentences of imprisonment for various offenses, as shown in Table 1.

- In general, the recommendations in Table 1 apply to offenses whose severity levels are proposed to be increased by the September Consensus Policy Package. Staff’s intent is to provide statutory maximum sentences sufficiently long so as not to constrain the offenses’ grid durations at their new severity levels.
- For criminal vehicular operation resulting in great bodily harm, staff also intends to mirror the statutory maximum penalty for fleeing resulting in great bodily harm.
- For first-degree assault resulting in great bodily harm, the reduction in the statutory maximum penalty is intended to make room, in terms of relative severity, for the more severe offense of intentionally inflicting great bodily harm (see the third suggestion, above).
- The only recommendation in Table 1 that is entirely unrelated to the September Consensus Policy Package is Criminal Sexual Conduct 5th Degree (Nonconsensual Sexual Penetration). Created in 2021, the offense presented a ranking challenge for the Commission: The Commission considered it more serious than Failure to Register as a Predatory Offender, and yet its low statutory maximum made it a poor fit anywhere else. Ultimately, the Commission resolved to assign the new offense its own severity level, H, but that severity level’s durations, including its upper and lower ranges, are constrained by the two-year statutory maximum at criminal history scores above 4. A four-year statutory maximum penalty, on the other hand, would allow the full ranges to be displayed on the grid.⁷

⁵ Minn. Stat. § 609.221, and its counterpart involving great bodily harm to an unborn child who is subsequently born alive, § 609.267.

⁶ See *State v. Backus*, 358 N.W.2d 93 (Minn. Ct. App. 1984) (affirming the trial court’s definition of “demonstrable” bodily harm as bodily harm capable of being perceived by a person other than the victim).

⁷ The Commission’s intent was that the durations for severity level H would be the same as the durations for severity level I. If the statutory maximum was raised to four years, severity levels H and I would display the same durations, but the presumptive dispositions would differ due to the mandatory minimum applicable to failure to register as a predatory offender. Figure 3 (p. 6) displays an excerpt of the Sex Offender Grid containing severity levels H and I.

Table 1. Staff-Suggested Recommended Changes to Statutory Maximum Penalties.

Minn. Stat. §	Offense	Severity Level	Current Stat. Max.	Recommended Stat. Max.
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)	5 & 6 (proposed)	5 years	7 years
609.221, subd. 1	Assault 1st Degree (Assault Resulting in Great Bodily Harm)	8 (proposed)	20 years	15 years
609.2231	Assault 4th Degree	3 (proposed)	Subds. 1(c) & 2(b): 3 years Subds. 3 & 3a: 2 years Subd. 4(b): 1 year & 1 day	3 years for all felonies
609.2247	Domestic Assault by Strangulation	5 (proposed)	3 years	5 years
609.3451, subd. 3(a)	Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)	H	2 years	4 years

Figures 1 (p. 4) and 2 (p. 5) illustrate the new ranking schemes that would result from the September Consensus Policy Package (single asterisk) and from these legislative recommendations (double asterisk). Figure 1 pertains to driving offenses, while Figure 2 pertains to assaults. Please see the key below each figure for an explanation of abbreviations.

In addition to illustrating the new ranking scheme, these figures display the new grid durations, in months, that are proposed to apply. This is intended to help the reader verify the need for higher statutory maximum sentences that do not constrain offenses' grid durations at their new severity levels, as previously discussed. To that same end, Figure 3 (p. 6) displays a portion of the Sex Offender Grid that demonstrates how the durations for Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration) are constrained at Severity Level H.

Figure 1. Proposed Ranking Hierarchy for Felony Criminal Vehicular Homicide, Criminal Vehicular Operation, and Driving While Impaired Offenses.

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>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ¹	
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288	
<i>Murder, 3rd Degree (Drugs)</i> <i>Assault, 1st Degree (Great Bodily Harm)</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189	CVH WI + QPDO*
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129	CVH & CVO-GBH WI + QPDO**
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{1,2}	DWI 1st Degree
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68	CVO-GBH WI & GN*
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57	CVO-GBH LS & DM
<i>Nonresidential Burglary</i>	4	12	15	18	21	24 21-28	27 23-32	30 26-36	
<i>Theft Crimes (Over \$5,000)</i>	3	12	13	15	17	19 17-22	21 18-25	23 20-27	CVO-SBH
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12	12	13	15	17	19	21 18-25	
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12	12	12	13	15	17	19 17-22	

Key: CVH = criminal vehicular homicide; CVO = criminal vehicular operation; DM = defective maintenance; DWI = driving while impaired; GBH = great bodily harm; GN = gross negligence; LS = leaving the scene; QPDO = qualified prior driving offense; SBH = substantial bodily harm; WI = while impaired. One asterisk (*) indicates a proposed new ranking resulting from the September Consensus Policy Package. Two asterisks (**) indicates a proposed new offense resulting from these legislative recommendations.

Figure 2. Proposed Ranking Hierarchy for Assault Offenses Impact by Proposals.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE							
		0	1	2	3	4	5	6 or more	
Murder, 2nd Degree (<i>Intentional; Drive-By-Shootings</i>)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ¹	1st: Intentional GBH**
Murder, 2nd Degree (<i>Unintentional</i>) Murder, 3rd Degree (<i>Depraved Mind</i>)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288	
Murder, 3rd Degree (<i>Drugs</i>) Assault, 1st Degree (<i>Great Bodily Harm</i>)	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189	1st: GBH Resulting*
Agg. Robbery, 1st Degree Burglary, 1st Degree (<i>w/ Weapon or Assault</i>)	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129	2nd: Weapon + SBH*
Felony DWI Financial Exploitation of a Vulnerable Adult	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{1,2}	
Assault, 2nd Degree Burglary, 1st Degree (<i>Occupied Dwelling</i>)	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68	2nd: Weapon
Residential Burglary Simple Robbery	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57	3rd: SBH* & Strangulation*
Nonresidential Burglary	4	12	15	18	21	24 21-28	27 23-32	30 26-36	
Theft Crimes (<i>Over \$5,000</i>)	3	12	13	15	17	19 17-22	21 18-25	23 20-27	4th*
Theft Crimes (<i>\$5,000 or less</i>) Check Forgery (<i>\$251-\$2,500</i>)	2	12	12	13	15	17	19	21 18-25	
Assault, 4th Degree Fleeing a Peace Officer	1	12	12	12	13	15	17	19 17-22	

Key: GBH = great bodily harm; SBH = substantial bodily harm; Strangulation = domestic assault by strangulation; Weapon = dangerous weapon. Ordinal numerals (1st, 2nd, etc.) indicate degrees of assault. One asterisk (*) indicates a proposed new ranking resulting from the September Consensus Policy Package. Two asterisks (**) indicates a proposed new offense resulting from these legislative recommendations.

Figure 3. Excerpt of the Sex Offender Grid Showing Severity Levels H and I.

CSC 5th Degree–3(a) (nonconsensual penetration)	H	12	14	16	18	24	24 ³ 24-24	24 ³ 24-24
Failure to Register as a Predatory Offender	I	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

¹ 12¹=One year and one day mandatory minimum under Minn. Stat. § 243.166, subd. 5(b).



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Sex Trafficking is not subject to a 144- or 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (For Severity Level A, Criminal History Scores 0, 1, & 2, the ranges are 123–172, 133–187, & 143–201, respectively. For Severity Level B, Criminal History Score 0, the range is 77–108.)

³ Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2. For Severity Level H, all displayed durations, including the upper and lower ranges, are constrained by the statutory maximum at criminal history scores above 4.