

# **Minnesota Sentencing Guidelines Proposed Revisions**

## **Purposes of the Guidelines and the Criminal History Score**

Prepared for the Minnesota Sentencing Guidelines Commission's Comprehensive  
Review of the Minnesota Sentencing Guidelines

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## **Minnesota Sentencing Guidelines 1.A** **Current Language and Proposed Revisions**

### 1. Purpose and Definitions

#### A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history.

The Sentencing Guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.

Public safety is furthered by sentences that work to reduce future crimes and victimizations through means such as rehabilitation, deterrence, and incapacitation. In some cases, it is furthered by reasonable caution in the choice of sanctions that could hinder a defendant's reintegration into the law-abiding community.

2. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
3. The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.

Proportionate sentence severity is measured against the defendant's blameworthiness and the harms done or risked to victims and the community in the current offense. Criminal history contributes to this assessment because it adds to the defendant's blameworthiness in the commission of the current offense.

4. Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.
5. Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

6. Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated.

**Note on Proposed Revisions:**

*a. The need for a definition of public safety.* The “purposes provisions” in the Guidelines play an important role in the institutional memory of the Commission and comprehension of the Guidelines among all actors in the sentencing system. One valuable product of the Comprehensive Review has been the Commission’s rich discussions of the Guidelines’ core purposes.

The original cornerstones of Minnesota’s Sentencing Guidelines were proportionality in sentence severity and the reduction of sentencing disparity, with no mention of public safety.<sup>1</sup> Rehabilitation, deterrence, and incapacitation were omitted as key strategies under the 1980 Guidelines largely because the Commission believed that “the evidence that crime rates can be lowered by changing sentencing practices was mixed and inconclusive.”<sup>2</sup>

Public safety became a leading purpose of Minnesota’s Sentencing Guidelines by statute in 1988, Minn. Stat. § 244.09, subd. 5(2), which designated public safety as the commission’s “primary consideration” when establishing or modifying the Guidelines. The legislation did not eliminate the original goals of proportionality and sentencing neutrality, which remain among the Guidelines ‘overarching principles. Instead, the legislation made the policies underlying the Guidelines more multi-dimensional and complex.

The Comprehensive Review would make an important contribution with an expression of how public safety should be understood in the context of Minnesota’s Guidelines. Such clarification is needed because there is no universally accepted definition of “public safety.”<sup>3</sup> The term has had contested meanings over past decades. Particularly since the 1990s, public safety has often been equated with incapacitation policy through greater use of incarceration.<sup>4</sup>

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<sup>1</sup> See Minnesota Sentencing Guidelines Commission, Staff Information Paper, *History of Minnesota Sentencing Guidelines’ Purpose and Principles* (April 4, 2024), at 3.

<sup>2</sup> See DALE G. PARENT, STRUCTURING CRIMINAL SENTENCES: THE EVOLUTION OF MINNESOTA’S SENTENCING GUIDELINES (1988), at 138.

<sup>3</sup> See Barry Friedman, *What Is Public Safety?*, 102 B. U. L. REV. 725, 728 (2022).

<sup>4</sup> See Friedman, *What Is Public Safety?*, at 785 (2022) (observing that “public safety” is commonly understood as a “locked up” philosophy that presupposes “cranking up the machinery of criminal justice”); Michael E. Smith & Walter Dickey, *Reforming Sentencing and Corrections for Just Punishment and Public Safety* (National Institute of Justice, 1999), at 1 (“In the press and in political discourse, “public safety” usually means more arrests, more illicit drugs seized, more sentences to incarceration”).

Discussions during the Comprehensive Review suggest that there is a broad agreement among Commission Members on the core principles of public safety under the Guidelines. The proposed revisions in Guidelines Section I.A.1 reflect those conversations.

The basic content of the proposed revision is to state that “public safety” within the Guidelines is effected sentences that work to reduce future criminal acts and victimizations through a broad range of means. These include rehabilitation, deterrence, and incapacitation—strategies intentionally omitted in the original Guidelines. The proposed revision references the classic utilitarian theories of criminal sentencing.<sup>5</sup> The list is not exclusive, to allow for future knowledge and innovation.

The proposal further counsels that, in some cases, public safety is safeguarded through the exercise of “reasonable caution in the choice of sanctions that could hinder a defendant’s reintegration into the law-abiding community.” Research and experience show that well-intentioned sentences can sometimes have counterproductive effects.<sup>6</sup> As in any form of complex human judgment, the risk of unintended consequences should be weighed by responsible decision

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<sup>5</sup> Many state statutes and the *Model Penal Code: Sentencing* endorse multiple crime-reductive strategies. See, e.g., Ala. Code § 13A-1-3(5) (general purposes of criminal code include “[t]o insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted and their confinement when required in the interests of public protection”); Cal. Penal Code § 1170(a)(1) (“the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice.”); 17-a Me. Rev. Stat. § 1501 (“The general purposes” of the sentencing article include: “Prevent crime through the deterrent effect of sentences, the rehabilitation of persons and the restraint of individuals when required in the interest of public safety.”); Tex. Penal Code § 1.02(1),(3) (“[T]he provisions of this code are ... to insure the public safety through: the deterrent influence of the penalties hereinafter provided; ... the rehabilitation of those convicted of violations of this code; ... such punishment as may be necessary to prevent likely recurrence of criminal behavior”); AMERICAN LAW INSTITUTE, MODEL PENAL CODE: SENTENCING (2023), Section 1.02(2)(a)(ii),(iv) at 51 (“The general purposes of the provisions on sentencing [include] ... offender rehabilitation, general deterrence, incapacitation of dangerous offenders, ... preservation of families, and reintegration of offenders into the law-abiding community.”).

<sup>6</sup> See BERT USEEM & ANNE MORRISON PIEHL, PRISON STATE: THE CHALLENGE OF MASS INCARCERATION (2008) (arguing that, as prison systems enlarge, they achieve diminishing returns in crime avoidance and eventually reach a tipping point when they become crime-productive); Cecelia M. Klingele, *Rethinking the Use of Community Supervision*, 101 J. CRIM. L. & CRIMINOLOGY 1015, 1045 (2013) (“There are many reasons to think ... that conditions of supervision are often neutral, and sometimes even detrimental, to the ability of convicted individuals to lead law-abiding lives.”); Ronald P. Corbett, Jr., *The Burdens of Leniency: The Changing Face of Probation*, 99 MINN. L. REV. 1697, 1711 (2015) (“What would have been unthinkable in the Progressive era is now a reality: probation is not viewed as an act of grace or a second chance at law-abiding living but rather a staging area for eventual imprisonment.”); Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1743-46 (2015) (collecting evidence that “burdensome economic sanctions are at odds with the goals of rehabilitation, offender reintegration, crime-reduction, and public safety”); Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry*, 41 N.M. L. REV. 421, 448 (2011) (among parolees interviewed by author, “some described ways in which parole was hindering their ability to successfully transition, particularly in terms of employment, one of the main correlates of success.”)

makers. The proposal recommends that policy-makers and judges stop to consider the possibility of unwanted effects in the application of criminal penalties, and to exercise “reasonable caution” when the danger appears real. Several states and the new *Model Penal Code: Sentencing* have found it useful to articulate this cautionary language in the sentencing context.<sup>7</sup>

*b. Clarification of the elements of proportionality.* Since their first iteration in 1980, the Guidelines have defined proportionality in sanction severity in relation to two reference points: “offense severity” and “the convicted felon’s criminal history.” The Guidelines say little about the how the two factors should be weighed and measured in proportionality determinations.<sup>8</sup>

The proposed revision to Guideline I.A.3 would fill these gaps for the benefit of future Commission Members and users of the Guidelines. The proposal clarifies that “offense severity” should be “measured against the defendant’s blameworthiness and the harms done or risked to victims and the community in the current offense;” and that criminal history is a factor in the proportionality equation because “it adds to the defendant’s blameworthiness in the commission of the current offense.”<sup>9</sup>

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<sup>7</sup> Some state statutes and sentencing guidelines express this sentiment broadly or in specific contexts. See Ky. Penal Code § 532.007(3)(b) (“Sentencing judges shall consider: ... [t]he likely impact of a potential sentence on the reduction of the defendant's potential future criminal behavior”); Mass. Sentencing Comm’n, Advisory Sentencing Guidelines (November 2017), at 114 (Guidelines Principle for judges stating that “[a]n excessive number of special conditions [of probation that] may increase rather than decrease the likelihood of recidivism.”); 17-a Me. Rev. Stat. § 1501 (The general purposes of the sentencing provisions include: “[m]inimize correctional experiences that serve to promote further criminality”); Md. State Comm’n on Criminal Sentencing Policy, Maryland Sentencing Guidelines Manual (2024) (Policy Statement Encouraging the Use of Alternatives to Incarceration When Appropriate), at iii (“there is a potential public safety and community benefit to limiting exposure to incarceration, especially for offenders who are a low risk to recidivate.”); Utah Sentencing Commission, 2023 Adult Sentencing, Release, & Supervision Guidelines (effective April 21, 2023), at 10 (“Incarceration can increase risk factors for lower risk individuals.”). See also AMERICAN LAW INSTITUTE, MODEL PENAL CODE: SENTENCING (2023), Section 1.02(2)(a)(iv) at 51 (in the sentencing offenders, one of the Code’s general purposes is “to avoid the use of sanctions that increase the likelihood the offender will engage in future criminal conduct.”).

<sup>8</sup> The relative importance of the two factors is addressed in Comment 2.B.01 (“[t]he Guidelines reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary factor in dispositional decisions. Under the Guidelines, the conviction offense is the primary factor, and criminal history is a secondary factor in dispositional decisions.”).

<sup>9</sup> See Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 13 (“[P]rior offending may increase the offender’s level of culpability for the current offense. If he is more culpable, he accordingly deserves more punishment.”). According to the Commission’s founding Director, this was the understanding of the Commission that promulgated the original Guidelines. See DALE G. PARENT, STRUCTURING CRIMINAL SENTENCES: THE EVOLUTION OF MINNESOTA’S SENTENCING GUIDELINES (1988), at 51:

The seriousness of a crime varies according to the gravity of the offense and the blameworthiness of the offender. Gravity is determined by the harm caused, directly or as a consequence, by the crime.

## Minnesota Sentencing Guidelines 2.B Current Language and Proposed Revisions

### 2. Determining Presumptive Sentences ...

#### B. Criminal History

The horizontal axis on the Sentencing Guidelines Grids is the criminal history score, which advances the Guidelines' goals of public safety and proportionality. The criminal history score reflects policy judgments that prior convictions are an important indicator of a defendant's risk of recidivism; and that they add to a defendant's blameworthiness in the commission of the current offense. The criminal history score is not meant to impose cumulative penalties for prior offenses that have previously been punished.

*[Paragraph break inserted.]*

An offender's criminal history score is the sum of points from eligible:

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

This section details the requirements for calculating the criminal history points in each of these areas. This section also details the requirements for calculating criminal history points for convictions from jurisdictions other than Minnesota and convictions for enhanced felonies.

#### Note on Proposed Revisions:

*a. The need to state the purposes of the criminal history score.* The Comprehensive Review would make an important contribution to the Guidelines by adding language that addresses the purposes of the criminal history score. Despite the fact that criminal history, along with offense severity, are the two major determinants of presumptive Guidelines sentences, the Guidelines have never expressed the underlying rationales of the criminal history score. Extensive discussions during the Comprehensive Review suggest broad agreement among Commission members on the purposes of the criminal history score. As summarized by Director Kelly Lyn Mitchell in a March 2025 memorandum to the Steering Committee:

The purpose of criminal history is both risk and blameworthiness. It indicates risk in that a person with a higher criminal history score is more likely to recidivate. It

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Blameworthiness is determined by the offender's motivation, intent, and behavior in the crime and is enhanced if the offender previously has been convicted of and sentenced for criminal acts.

indicates blameworthiness in that the person has been previously convicted but hasn't yet corrected their behavior.<sup>10</sup>

The Comprehensive Review has shown time and again that the operation of the criminal history score cannot be evaluated, and the desirability of amendments cannot be appraised, without reference to its underlying purposes. A specification of these purposes would greatly benefit future Commission Members and users of the Guidelines.

Proposed language for Guideline 2.B would clarify that the criminal history score in the current Guidelines is intended to advance the *dual purposes* of (1) public safety and (2) proportionality in sentence severity. The proposed revision specifies that “[t]he criminal history score reflects policy judgments that prior convictions are an important indicator of a defendant’s risk of recidivism;<sup>11</sup> and that they add to a defendant’s blameworthiness in the commission of the current offense.”

It may be equally important to say what the criminal history score is *not* trying to do. The proposed revision states that “[t]he criminal history score is not intended to impose cumulative penalties for prior offenses that have previously been punished.” This principle may not be self-evident to future Commission Members and users of the Guidelines, so is worth making explicit.<sup>12</sup>

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<sup>10</sup> Kelly Lyn Mitchell, Memorandum to the Comprehensive Review Steering Committee, *Criminal History Proposals*, reviewed at the Steering Committee’s March 12, 2025 meeting.

<sup>11</sup> On the usefulness of criminal history as a predictor of future criminality, see RICHARD S. FRASE & JULIAN V. ROBERTS, *PAYING FOR THE PAST* (Oxford Univ. Press 2019), at 45 (“Studies exploring the link between past and future offending have been reported for decades now and the basic finding is uncontested: the more extensive the offender’s prior record, the higher the likelihood of subsequent re-offending.”). For a study of the efficacy of the criminal history score as a proxy for recidivism risk in Minnesota’s Guidelines, see Julia A. Laskorunsky, *Minnesota Criminal History Score Recidivism Project* (Robina Institute of Criminal Law and Criminal Justice, 2018); see *id.* at 22 (Minnesota’s criminal history score “is moderately predictive of recidivism, but it has components that increase recommended sentences while adding no or minimal predictive power”).

<sup>12</sup> In analyzing the purposes of criminal history as a factor in sentence severity, many researchers start with the following question: “Why should an offender’s previous offenses—for which he has already been punished—count against him at sentencing hearings for subsequent offenses?” Richard S. Frase, Julian R. Roberts, Rhys Hester, and Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 11. This is a useful perspective to keep in mind. As recommended in the AMERICAN LAW INSTITUTE, *MODEL PENAL CODE: SENTENCING*, Section 9.06(1)(a), at 604, “If criminal history is used for purposes of assessing offenders’ blameworthiness for their current offenses, the [sentencing] commission shall consider that offenders have already been punished for their prior convictions.”