

2021 Regular Session Laws

Amendments to Crime Laws Affecting the Guidelines

May 27, 2021

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § 244.09, subd. 11, the Commission may make such modifications without advance submission to the Legislature. In its 2021 Regular Session, the Minnesota Legislature made a small number of changes to crime laws considered technical in nature by MSGC staff.

As of the date of this staff paper, the Governor had not taken final action on several of these provisions. Final action will occur before the date of the next Commission meeting (June 3, 2022), at which time staff will advise the Commission whether any provisions were vetoed.

A. Technical Amendment Directly Affecting the Guidelines – Identity Theft

One amendment that passed during the 2021 Regular Session directly affects the Guidelines and is therefore subject to Commission review.

- **2021 Minn. Laws [ch. 25](#) (House File 809)**

Description: Identity Theft is amended to separate two crimes now codified under the same penalty provision (Minn. Stat. § 609.527, subd. 3, clause (5)). Currently, identity theft involving eight or more direct victims or a combined, total loss to all victims of more than \$35,000 appears in the same clause as identity theft related to possession or distribution of child pornography (regardless of the number of victims or total loss). Both crimes have the same statutory maximum of 20 years and/or a \$100,000 fine (referenced from the theft statute, Minn. Stat. § 609.52, subd. 3(1)). The new law separates these offenses into two different numbered clauses (clauses 5 & 6). The penalty levels did not change.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

Guidelines Considerations: Currently, Identity theft under Minn. Stat. § 609.527, subd. 3(5)—involving eight or more direct victims, involving a combined, total loss to all victims of more than \$35,000, or related to child pornography—is ranked at Severity Level 8. All Identity Theft offenses are on the list of Offenses Eligible for Permissive Consecutive Sentences in Guidelines § 6.

References: Minn. Stat. §§ [609.527](#) & [609.52](#).

Long-Term Fiscal Impact: NA.

Demographic Impact: NA.

MSGC Staff Recommendation: Make conforming and technical modifications to how the offenses are described in the lists of severity level offense references (section 5). This will effectively maintain the existing severity-level ranking. Add parenthetical offense descriptions at all severity levels to clarify offense distinctions. Make no changes to the list of permissively-consecutive offenses (section 6) which will keep all Identity thefts on the list, as follows.

Possible Amendments to 2020 Minn. Sentencing Guidelines § 5:

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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.

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Severity Level	Offense Title	Statute Number
8	Identity Theft <u>(8 or More Direct Victims or Loss Over \$35,000)</u>	609.527, subd. 3(5)
	Identity Theft (Related to Child Pornography)	609.527, subd. 3(6)
3	Identity Theft <u>(4–7 Direct Victims or Loss Over \$2,500)</u>	609.527, subd. 3(4)
2	Identity Theft <u>(2–3 Direct Victims or \$501–\$2,500 Loss)</u>	609.527, subd. 3(3)

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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.

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Statute Number	Offense Title	Severity Level
609.527 subd. 3(3)	Identity Theft <u>(2–3 Direct Victims or \$501–\$2,500 Loss)</u>	2

Statute Number	Offense Title	Severity Level
609.527 subd. 3(4)	Identity Theft (<u>4–7 Direct Victims or Loss Over \$2,500</u>)	3
609.527 subd. 3(5)	Identity Theft (<u>8 or More Direct Victims or Loss Over \$35,000</u>)	8
<u>609.527 subd. 3(6)</u>	<u>Identity Theft (Related to Child Pornography)</u>	<u>8</u>

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B. Amendments Not Directly Affecting the Guidelines

Below are amendments passed during the 2021 Regular Session that may be of interest to the Commission. No action is required or recommended.

1. Technical Amendments to Wrongfully Obtaining Public Assistance

- **2021 Minn. Laws [ch. 30, art. 3, § 43](#) (House File 2128)**

Description: Makes technical changes to Wrongfully Obtaining Public Assistance under Minn. Stat. § 256.98, subd. 1, by separating the offense description into a new paragraph (a) from a new paragraph (b) where the acknowledgment that failure to act or concealing the offense is a continuation of the offense. In paragraph (a) the term used related to WIC is changed from “vouchers” to “food benefits.”

Effective Date: July 1, 2021.

Guidelines Considerations: Welfare Fraud is ranked (section 5.B) according to monetary values listed in the theft offense list (section 7):

- Welfare Fraud (Over \$5,000) – Severity Level 3
- Welfare Fraud (\$5,000 or Less) – Severity Level 2

References: Minn. Stat. §§ [256.98](#) & [609.52](#).

Long-Term Fiscal Impact: NA.

Demographic Impact: NA.

MSGC Staff Recommendation: No action is required or recommended.

2. Uniform Recognition and Enforcement of Canadian Orders for Protection Act

- **2021 Minn. Laws [ch. 6, art. 2, § 1](#) (Senate File 395)**

Description: Amends Minn. Stat. § 518B.01 to punish the violation of a Canadian order for protection (OFP) the same as the violation of an OFP issued by Minnesota, another state or U.S. territory, the United States, the District of Columbia, or tribal lands.

Effective Date: Not specified (August 1, 2021).

Guidelines Considerations: Violation of an Order for Protection is ranked at Severity Level 4 (section 5) and is on the list of Offenses Eligible for Permissive Consecutive Sentences (section 6).

References: Minn. Stat. § [518B.01](#).

Long-Term Fiscal Impact: NA.

Demographic Impact: NA.

MSGC Staff Recommendation: No action is required or recommended.

3. Release of Pregnant and Postpartum Prisoners

- 2021 Minn. Laws [ch. 17](#) (Senate File 1315)

Description: Authorizes the Commissioner of Corrections to conditionally release:

- For up to one year postpartum, an inmate who is postpartum and gave birth within eight months of the date of commitment; and
- For the duration of the pregnancy and up to one year postpartum, an inmate who is pregnant.

The inmate may be conditionally released to community-based programming that provides prenatal or postnatal care and promotes mother-child bonding, as well as parenting skills, employment, educational, chemical dependency or mental health services.

Effective Date: Not specified (August 1, 2021).

Guidelines Considerations: The bill expands on the Commissioner's existing authority to grant conditional release for employment at one-half the term of imprisonment. The Guidelines do not address work release programs. See Guidelines section 3.A.3(6).

References: Minn. Stat. § 244.065.

Long-Term Fiscal Impact: NA.

Demographic Impact: NA.

MSGC Staff Recommendation: No action is required or recommended.

4. Inmate Reentry Assistance

- 2021 Minn. Laws [ch. 24](#) (Senate File 519)

Description: Requires the Commissioner of Corrections to provide inmates, upon release, records of outstanding fines and criminal, medical, and programming history; information on voting, expungement, and obtaining criminal history records and public assistance; and assistance in obtaining a social security card. The Commissioner must also create a homelessness mitigation plan for releasees and update the Legislature on the plan's progress. A Department of Corrections identification card is deemed to be valid form of identification when applying for a driver's license.

Effective Date: Various.

Guidelines Considerations: NA.

References: NA.

Long-Term Fiscal Impact: NA.

Demographic Impact: NA.

MSGC Staff Recommendation: No action is required or recommended.