

2015-16 Work Plan Options

Presented to Minnesota Sentencing Guidelines Commission

Presented: July 22, 2015

Updated: Jan. 27, 2016



SENTENCING GUIDELINES COMMISSION

Seven Guidelines Principles ...



... Plus Nine Workshop Themes ...

Finite Prison
Capacity

Departure Rates

Criminal
History/Grid

Racial/Geo
Disparity

Drugs

Offense
Rankings

Mandatory
Minimums

Judicial Issues

Legislative
Communication

... Resulted in Four Project Areas ...



Unfinished Business

Intentional Murder, Drive-by (vehicular)	11	306 261-367	328 278-391	348 295-415	368 312-439	388 329-463	408 346-487	363...
Murder, 3rd Degree (unintentional murder)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
Controlled Substance Crime, 1st Degree		86 71-103	90 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
Aggravated Robbery, 1st Degree		58 50-69	60 58-61	70 67-83	80 75-105	88 84-117	98 92-129	108 101-139
Felony DWI, Financial Exploitation of a Vulnerable Adult		42 46-64	48 46-64	54 51-72	60 57-79	66 62-84	72 64-111	78 72-111
Controlled Substance Crime, 2nd Degree		27 34-46	33 34-46	39 39-54	45 44-61	51 44-61	57 49-68	63 54-78
Residential Burglary, Simple Robbery		23 29-39	28 29-39	33 33-45	38 37-51	43 37-51	48 41-57	53 47-61
Nonresidential Burglary		15 18-21	18 18-21	21 21-28	24 23-32	27 23-32	30 26-36	33 30-38
Theft Crimes (Over \$5,000)		12 12-15	13 13-15	15 15-17	17 17-22	21 18-25	23 20-27	26 23-31
Theft Crimes (\$5,000 or less)		2 12-15	12 12-13	13 13-15	15 15-17	17 17-19	19 19-21	21 21-23
Felony (\$251-\$2,500)								

Vertical Grid Axis
(Offense Severity)

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Aggravated Robbery, 1st Degree	8	58 50-69	60 58-61	70 67-83	80 75-105	88 84-117	98 92-129	108 101-139
Controlled Substance Crime, 2nd Degree	7	27 34-46	33 34-46	39 39-54	45 44-61	51 44-61	57 49-68	63 54-78
Residential Burglary, Simple Robbery	4	23 29-39	28 29-39	33 33-45	38 37-51	43 37-51	48 41-57	53 47-61
Nonresidential Burglary	3	15 18-21	18 18-21	21 21-28	24 23-32	27 23-32	30 26-36	33 30-38
Theft Crimes (Over \$5,000)	2	12 12-15	13 13-15	15 15-17	17 17-22	21 18-25	23 20-27	26 23-31
Theft Crimes (\$5,000 or less)	1	2 12-15	12 12-13	13 13-15	15 15-17	17 17-19	19 19-21	21 21-23
Felony (\$251-\$2,500)								

Horizontal Axis
(Criminal History)



Recommendations
to Legislature

New Possible Work Plan Items for Commission's Consideration

Address inconsistency between stealing and receiving stolen motor vehicles	Clarify application of Guidelines to Extended Jurisdiction Juveniles (EJJ) Revocation	Address repeat violent offender sentencing	Review unranked offenses (Task 2.3, but with new public input)
Address internal inconsistency between treatment of non-Minnesota convictions	Distinguish between dispositional and durational reasons for departure	Remove decimals from ranges on attempted murder grid	Make technical modifications

Stealing vs. Receiving Stolen Vehicle

Defendant is in possession of a stolen motor vehicle. If convicted of—

- General theft, with intent to deprive permanently (§ 609.52, subd. 2(a)(1)), offense is ranked at **Severity Level 4**, regardless of value.
- Motor Vehicle Use Without Consent (§ 609.52, subd. 2(a)(17)), offense is ranked at **Severity Level 3**, regardless of value.
- Receiving Stolen Goods (§ 609.53) or other theft-related offense:
Ranked at—
 - **Severity Level 3**, if the value of the vehicle is greater than \$5,000
 - **Severity Level 2**, if the value of the vehicle is \$5,000 or less

(This is a common source of confusion among practitioners.)



Extended Jurisdiction Juvenile Revocation

- If, e.g., a 16- or 17-year-old commits presumptive-commit offense—
 - EJJ prosecution applies
 - At disposition, court imposes juvenile disposition *and* stayed adult sentence
 - Guidelines apply when determining the stayed adult sentence (MSG § 3.D)
- If court later finds reasons to revoke stay of execution of sentence—
 - It may impose any sanction available at an adult probation revocation hearing
- For EJJ revocation, Guidelines arguably do not address these questions:
 - If offense was a presumptive commit, is a stayed adult sentence a departure?
 - If offense was a presumptive stay, is an executed commitment a departure?
- Current working assumption of MSGC staff:
 - Guidelines control presumptive disposition at EJJ revocation.



Repeat Violent Offenders

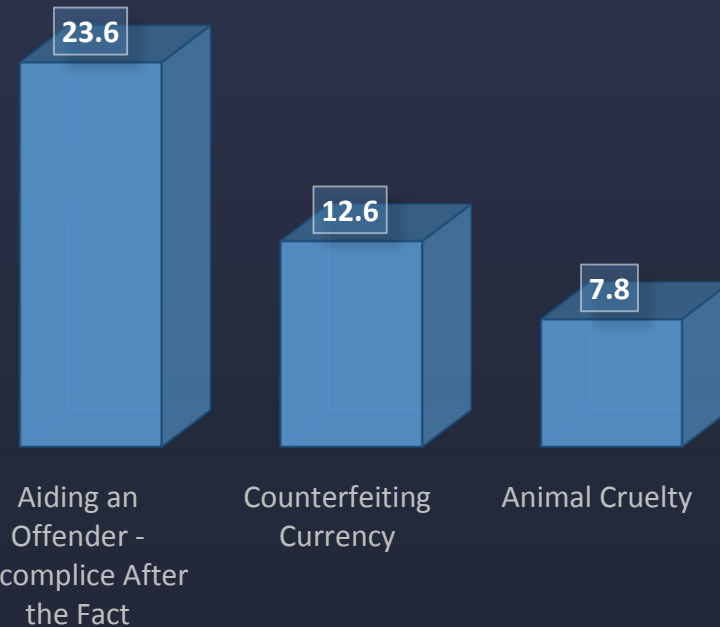
- A crime victim's surviving family members have requested that the Commission support their proposal for stiffer mandatory sentences for repeat violent offenders
- This appears to be a request for Legislative recommendation, rather than direct Guidelines action



Ranking Unranked Offenses

- An animal-rights advocate has requested that the Commission look at ranking the unranked offense of animal cruelty
- Reranking existing laws may have to wait until 2017 to take effect ...
 - See Minn. Stat. § 244.09, subd. 11.

TOP THREE UNRANKED OFFENSES BY CASES SENTENCED ANNUALLY, 2010-14




Out-of-State Conviction Inconsistency

- Action may be necessary to resolve apparent inconsistency between the Guidelines and Commentary.
- From § 2.B.5.b: “The **offense definitions in effect when the offense was committed** govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.”
- From Comment 2.B.502: “Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined by **current Minnesota offense definitions** and sentencing policies, except as provided in section 2.B.7.”



Disposition vs. Durational Departure Grounds

- When imposing a durational departure, court may rely on offense-related factors only, not offender-related factors.
 - Should the Guidelines mention this limitation?
 - Should the Guidelines classify offense- and offender-related factors?
 - Will republishing *Minn. Sentencing Guidelines Annotated* suffice?

	... may support this type of dispositional departure:	... may support this type of durational departure:
Offense-related factors ...	mitigated ¹ and aggravated ²	mitigated ³ and aggravated ²
Offender-related factors ...	mitigated ⁴ and aggravated ⁵	neither mitigated ⁶ nor aggravated ²

— Preliminary analysis only. —

¹*State v. Love*, 350 N.W.2d 359 (Minn. 1984). ²*State v. Chaklos*, 528 N.W.2d 225 (Minn. 1995). ³*State v. Peter*, 825 N.W.2d 126 (Minn. App. 2012). ⁴*State v. Trog*, 323 N.W.2d 28 (Minn. 1982). ⁵*State v. Hanf*, 687 N.W.2d 659 (Minn. App. 2004), *rev'd on other grounds* (Minn. Dec. 13, 2005). ⁶*State v. Peter*, 825 N.W.2d 126 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013).

Decimals in Attempted Murder Grid

- Guidelines grids must display a range that is 15% lower and 20% higher than the fixed duration displayed
- Guidelines grids round up on the low end, and round down on the high end, to nearest whole number of months
- Exception: One-row attempted murder grid, where decimals are used.
- For consistency, should that grid be rounded also?

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or More
<i>Conspiracy / Attempted Murder, 1st Degree</i>	180 153-216	190 161.5-228	200 170-240	210 178.5-240 ¹	220 187-240 ¹	230 195.5-240 ¹	240 204-240 ¹

Technical Modifications

- Staff requests future agenda time to address technical modifications to the Guidelines
- Example: a felony inadvertently omitted from the Guidelines (Minn. Stat. § 211B.15) should be placed on list of unranked offenses

