2015-16 Work Plan Options

Presented to Minnesota Sentencing Guidelines Commission
Presented: July 22, 2015
Updated: Jan. 27, 2016
Seven Guidelines Principles ...

- Uniformity
- Predictability
- Public Safety
- Rationality
- Proportionality
- Neutrality
- Capacity
... 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 ...
... and Eleven Potential MSGC Tasks.

1. Unfinished business
   • 1.1 Report to Legislature ✓
   • 1.2 Consecutive sup. release ✓
   • 1.3 Shaded ranges
   • 1.4 Impermissible departure reasons

2. Vertical Grid Axis
   • 2.1 Review rankings’ proportionality ✓
   • 2.2 Restructure drug rankings ✓
   • 2.3 Review unranked offenses

3. Horizontal Grid Axis
   • 3.1 Examine criminal history scores
   • 3.2 Examine slope/overlap of grid durations

4. Advise Legislature regarding:
   • 4.1 Drugs ✓
   • 4.2 Mandatory minimums
## New Possible Work Plan Items for Commission’s Consideration

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

- Aiding an Offender - Accomplice After the Fact: 23.6
- Counterfeiting Currency: 12.6
- Animal Cruelty: 7.8
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?

<table>
<thead>
<tr>
<th>Offense-related factors ...</th>
<th>... may support this type of dispositional departure: mitigated(^1) and aggravated(^2)</th>
<th>... may support this type of durational departure: mitigated(^3) and aggravated(^2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender-related factors ...</td>
<td>mitigated(^4) and aggravated(^5)</td>
<td>neither mitigated(^6) nor aggravated(^2)</td>
</tr>
</tbody>
</table>

— Preliminary analysis only. —

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?

<table>
<thead>
<tr>
<th>SEVERITY LEVEL OF CONVICTION OFFENSE</th>
<th>CRIMINAL HISTORY SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conspiracy / Attempted Murder, 1st Degree</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>180</td>
</tr>
<tr>
<td></td>
<td>153-216</td>
</tr>
</tbody>
</table>
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