

FELONY SENTENCING GUIDELINES

Proposal could reduce sentences for repeat felons

The Minnesota Sentencing Guidelines Commission is considering changes to a longstanding practice known as “Hernandizing.”

By MULTIPLE AUTHORS

This article was submitted by the executive committee of the Minnesota County Attorneys Association. Their names are listed below.

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When someone commits multiple felony offenses, those crimes should matter when determining the appropriate sentence. That principle seems straightforward. Yet the Minnesota Sentencing Guidelines Commission is considering changes to a longstanding sentencing practice known as “Hernandizing,” which recognizes the cumulative seriousness of multiple felony convictions resolved at the same time.

In Minnesota, sentencing is based on a grid. Every offense is ranked by severity, and an offender is sentenced based on the amount of criminal history points they acquire. Points are generally given if an offender has been convicted of a felony.

If an offender is convicted of multiple felonies, they will have more criminal history points.

For instance, if John Doe has four criminal history points and commits an armed robbery with John Smith, who has zero criminal history points, John Doe would face a more severe sentence than would John Smith.

This practice comes from a 1981 Minnesota Supreme Court case, *State v. Hernandez*, which allows a district court to sentence an offender for multiple offenses at one time while accruing criminal history points for each offense. So the court can sentence each next offense with each new criminal history score. In essence, the court is allowed to sentence multiple crimes in one hearing instead of setting it for different hearings, and if an offender commits multiple felonies in a short amount of time, they will face more time.

If one of the most radical proposals before the commission is successful, Hernandizing would end. And in doing so, criminal history points would no longer accrue for each pending offense. Eliminating this practice would fundamentally change how Minnesota courts account for multiple offenses at sentencing. It would risk treating defendants with multiple convictions more leniently simply because their cases happen to be resolved in a single proceeding.

Without Hernandizing, an offender facing multiple unrelated charges – arising, for example, from a spree of burglaries, a pattern of domestic violence against different victims, or a series of drug transactions – would receive an artificial discount simply because the cases happened to be consolidated for sentencing on a single day. That is not a technicality. It is the difference between proportional accountability and a loophole that rewards defendants who would arrange to have multiple cases resolved together.

For instance, and as an actual case example, a person sexually abused his daughter’s 8-year-old and 10-year-old friends on several separate occasions over a 15-month

period. This offender had hundreds of videos of the abuse that he filmed while he assaulted them. He was found guilty and received a 30-year prison sentence. However, under the new proposed policy, he would only receive a 12-year prison sentence.

In another actual example, a person possessed child abuse material of five girls under the age of 14 that he downloaded on separate occasions. He was found guilty and sentenced to a 102-month prison term. However, under the new proposed policy, he would not go to prison but would, instead, be placed on probation and have a 24-month stayed sentence.

As county attorneys, we believe this would be at odds with our pursuit of justice and the protection of public safety. Hernandizing is one of our best tools to prosecute repeat offenders of crimes such as domestic abuse, possession and manufacturing of child sexual abuse material, and dealing drugs. Our offices are swamped with repeat felony offenders whose consequences for their actions will be lessened if the commission goes forward with this change. This change would frustrate victims, police and the judiciary as it would allow repeat felony offenders to continue committing crimes with impunity while their cases are pending.

It would also take away one of the most important aspects of the criminal justice system: discretion. Prosecutors have discretion to use Hernandizing as a method to get multiple cases resolved. However, prosecutors do not have the final say.

A judge’s discretion is a check on overaggressive prosecutions. The sentences of those judges are reviewed by the Court of Appeals. The Court of Appeals’ opinions are reviewed by the Minnesota Supreme Court. And at every level – the county attorneys as well as the judges at district court, the Court of Appeals and the Supreme Court – these are elected positions which are subject to re-election and the approval of voters.

We ask you to reach out to the commission by emailing sentencing.guidelines@state.mn.us to voice your opposition to this proposal before its next meeting on Oct. 8.

It’s rare that the Minnesota County Attorneys Association writes directly to the public to inform it of an issue. However, on an issue that could negatively affect victims’ rights, public safety and the integrity of our justice system, we cannot stand silent. While reforms are sometimes necessary, they must make sense. And to us, reducing sentences for repeat felony offenders doesn’t make any sense at all.

The authors are members of the Minnesota County Attorneys Association’s executive committee: Brandi L. Schiefelbein, Meeker County attorney; Kyra Ladd, Wadena County attorney; Kevin Magnuson, Washington County attorney; Michelle Eldien, Otter Tail County attorney; Ron Hocesvar, Scott County attorney; Karin Sonneman, Winona County attorney; and Robert Small, executive director of the association.



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“Our offices are swamped with repeat felony offenders whose consequences for their actions will be lessened if the commission goes forward with this change,” the authors write.