

Minnesota Sentencing Guidelines Commission

Modifications to the Sentencing Guidelines – 2015 Legislative Bills Passed into Law; Creating or Amending Crime Laws May 21, 2015

The following are Legislative crime bills passed into law that must be considered by the Commission for possible modifications to the Sentencing Guidelines.

- A. Amended Felony Crime Law Affecting the Guidelines.** The following existing offense was amended by a law passed during the 2015 Legislative Session, and must be reviewed by the Commission.

Commission Action: For the offense listed below, taking the amendments into consideration, the Commission must decide if the offense should be re-ranked, if there should be any amendments to the permissive consecutive offense list, or another other amendments to the Guidelines.

- **Fourth-Degree Assault Expanded**

Description: This law expands fourth-degree assault protections to employees supervising and working directly with mentally-ill and dangerous patients by amending Minn. Stat. § 609.2231, subd. 3a.

Currently, paragraph 3a(b) makes certain assaults felonies, provided they are committed (1) by persons committed to the Minnesota Sex Offender Program (MSOP) (ch. 253D), (2) against caregivers and treatment providers, (3) in the MSOP at Moose Lake and the Minnesota Security Hospital. The act expands the definition of “secure treatment facility” to include the entire Minnesota Security Hospital, not just the MSOP.

In addition, a new paragraph 3a(c) expands the crime to include assaults against secure treatment facility staff by persons not committed to MSOP; namely, persons committed as mentally ill and dangerous (§ 253B.18) and patients admitted from jail or prison who are ordered confined for a competency examination (§ 253B.10, cl. (1)).

The statutory maximum is two years. A mandatory minimum prison sentence of one year and one day continues to apply to the existing paragraph 3a(b), which applies only to persons committed to MSOP. The mandatory minimum does not apply to the new paragraph 3a(c).

Effective Date: August 1, 2015.	Reference: 2015 Minn. Laws ch. 23 § 1 ; 2014 Minn. Stat. § 609.2231, subd. 3a .
Est. Bed Impact: 1 bed every other year.	Racial Disparity Impact: Not estimated.

Guidelines Considerations: The fourth-degree assault statute creates five different felonies for various assaults (against peace officers; against firefighters and EMTs; against correctional employees, prosecutors, judges, and probation officers; against secure treatment facility personnel; and assaults motivated by bias). The statutory maximums range from one year and one day to three years. Each assault in the fourth degree is ranked at Severity Level 1, for which the Guidelines recommend a presumptive commitment sentence when an offender has a Criminal History Score of 6 or more.

Bed Impact: In the last three years (2011-2013), 11 offenders have been sentenced for the existing offense under the existing paragraph 3a(b).

Despite the mandatory minimum prison term, only three of the 11 offenders sentenced received an executed prison sentence. The average pronounced prison sentence was 17 months (serve two-thirds or 11 months). It is a departure from the Guidelines to stay execution or imposition of the sentence. It is assumed that the expansion of this offense will result in no more than a 50 percent increase in the number of offenders currently sentenced under the provisions.

Because these people have already been civilly committed, it is possible that some portion could be found incompetent to stand trial or not guilty by reason of mental illness.

MSGC Staff Recommendation: First, it is recommended that the Severity Level 1 ranking in section 5 be maintained because the statutory maximum remains two years. Second, it is recommended that assault in the fourth degree remain on the list of offenses in section 6 which are eligible for permissive consecutive sentences. Third, it is recommended that the fourth-degree assault offense titles, as listed in Section 5.B., be updated to reflect statutory changes to fourth degree assault enacted since 2004.¹ Fourth, it is recommended that Appendix 1 be updated to reflect the MSOP-related mandatory minimum, as well as to clarify the general rule regarding executed consecutive sentencing for assaults committed by prison inmates. The recommended modifications to the Guidelines are listed below.

¹ These changes include: adding protected victims; removing the requirement of bodily harm, as the crime can be accomplished, in most cases, by the harmless transfer of bodily fluids; and clarifying, in a footnote, that the mandatory minimum table need only be referenced, in cases of assaults on secure treatment facility personnel, when the assault was by persons committed to MSOP.

Section 5.B. Severity Level by Statutory Citation

Statute Number	Offense Title	Severity Level
609.2231 subd. 1	Assault 4th Degree (Bodily Harm , Peace Officer)	1
609.2231 subd. 2	Assault 4th Degree (Bodily Harm , Firefighters and Emergency Medical Personnel)	1
609.2231 subd. 3	Assault 4th Degree (Bodily Harm , Corrections Employee, <u>Prosecutor, Judge, Probation Officer</u>)	1 *
609.2231 subd. 3a	Assault 4th Degree (Bodily Harm , Secure Treatment Facility Personnel)	1 *

* See section 2.C and Appendix 1 to determine the presumptive disposition for a ~~felony~~ assault committed by an State prison inmate serving an executed term of imprisonment or for assault on secure treatment facility personnel by persons committed to the Minnesota Sex Offender Program.

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

Statute	Offense	Prerequisite or Conditions	Minimum Duration
<u>609.221, 609.222, 609.223, - 609.2231 or 609.224</u>	Assault <u>1st through 5th Degree</u>	<u>Committed by State prison inmate while confined (609.2232)</u> <u>Must commit during "Term of Imprisonment" portion of executed sentence</u>	<u>Grid Time, Consecutive</u>

Statute	Offense	Prerequisite or Conditions	Minimum Duration
<u>609.2231, subd. 3a(b)</u>	<u>Assault 4th Degree</u>	<u>Committed by person committed to the Minnesota Sex Offender Program</u>	<u>Grid Time</u>

B. Amended Crime Laws Not Affecting the Guidelines. Although these laws were amended by the 2015 Legislature, the crimes themselves were not amended. No action is necessary on the part of the Commission. Staff brings these changes forward for the Commission’s information.

1. Correcting References to Murder in the First Degree under Minn. Stat. § 609.185, Paragraph (a)

Description: The amendments did not substantively alter the criminal provisions. Several places in law omitted the reference to paragraph (a) of murder in the first degree which was originally inserted into the law in 2002. 2002 Minn. Laws [ch. 401, art. 1, § 15](#).

References were inserted into the following statutes: supervised release term (Minn. Stat. § [244.05](#)); definition for child abuse crime (Minn. Stat. § [299C.61](#)); terms for heinous crimes (Minn. Stat. § [609.106](#)); murder in the second degree (Minn. Stat. § [609.19](#)); and assault in the third degree (Minn. Stat. § [609.19](#)).

Effective Date: May 12, 2015	Reference: 2015 Minn. Laws ch. 21 , art 1, §§ 37, 66, 98-100; 2014 Minn. Stat. § 244.05 ; § 299C.61 ; §§ 609.106 ; 19 ; 223 .
Est. Bed Impact: Not estimated.	Racial Disparity Impact: Not estimated.

Commission Action: No action is necessary.

2. Reporting of Maltreatment of Minors

Description: The amendments did not affect the criminal provisions. The public policy (subdivision 1) was amended to emphasize that “the health and safety of the children shall be of paramount concern.” Subdivision 7 contains criminal penalties if a person fails to report neglect or abuse. It is a felony with a two-year statutory maximum if a parent, guardian, or caretaker reasonably should know that a child’s

health is in serious danger and the child dies because of the lack of medical care. The offense is unranked in the Guidelines.

Effective Date: March 18, 2015	Reference: 2015 Minn. Laws ch. 4 , § 1; 2014 Minn. Stat. § 626.556 .
Est. Bed Impact: Not estimated.	Racial Disparity Impact: Not estimated.

Commission Action: No action is necessary.