

# Minnesota Sentencing Guidelines Commission

## Technical Modifications to the Sentencing Guidelines – 2015 Revisor’s Instruction and Other Staff Recommendations May 21, 2015

**A. Technical Changes Required.** A Revisor’s instruction made during the 2015 Legislative Session requires technical changes to the Guidelines.

- **Change to Headnote for Minn. Stat. § 609.713**

**Description:** The amendment did not affect the criminal provisions, but created the need to change several references in the Guidelines. The headnote of Minn. Stat. § 609.713 was changed from "Terroristic Threats" to "Threats of Violence."

<b>Effective Date:</b> May 12, 2015	<b>Reference:</b> Reference: <a href="#">2015 Minn. Laws ch. 21</a> , art. 1, § 109, subd. 10; 2014 Minn. Stat. § <a href="#">609.713</a> .
<b>Est. Bed Impact:</b> Not estimated.	<b>Racial Disparity Impact:</b> Not estimated.

**Commission Action:** Authorize technical changes to the Guidelines, as follows.

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**2.C.06.** *There are rare instances where the presumptive sentence length exceeds the statutory maximum sentence. If this situation occurs, the statutory maximum sentence becomes the presumptive sentence. For example, ~~terroristic threats~~ threats of violence under Minn. Stat. § 609.713, subd. 3(a)(1) or (2) carries a statutory maximum sentence of 12 months and 1 day.\*\*\**

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**2.D.105.** *Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.*

*In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of*

~~terroristic threats~~ threats of violence (Minn. Stat. § 609.713) in statute, so a ~~terroristic threats~~ charge of threats of violence cannot be amended from a felony to a gross misdemeanor.\*\*\*

**Section 5.A. Offense Severity Reference Table**

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Severity Level	Offense Title	Statute Number
4	<del>Terroristic Threats of Violence</del> <u>(Terror/Evacuation)</u>	609.713, subd. 1
2	<del>Terroristic Threats of Violence</del> <u>(Bomb Threat)</u>	609.713, subd. 2
1	<del>Terroristic Threats of Violence</del> <u>(Replica Firearm)</u>	609.713, subd. 3(a)

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**Section 5.B. Severity Level by Statutory Citation**

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Statute Number	Offense Title	Severity Level
609.713, subd. 1	<del>Terroristic Threats of Violence</del> <u>-Violence Threat (Terror/Evacuation)</u>	4
609.713, subd. 2	<del>Terroristic Threats of Violence</del> <u>- (Bomb Threat)</u>	2
609.713, subd. 3(a)	<del>Terroristic Threats of Violence</del> <u>- (Replica Firearm)</u>	1**

\*\* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender’s criminal history score, the presumptive duration may exceed the statutory maximum.

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**Section 6. Offenses Eligible for Permissive Consecutive Sentences**

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<b>Statute Number</b>	<b>Offense Title</b>
609.713, subd. 1	<del>Terroristic Threats of Violence</del> - Violence Threat (Terror/Evacuation)
609.713, subd. 2	<del>Terroristic Threats of Violence</del> - (Bomb Threat)
609.713, subd. 3(a)	<del>Terroristic Threats of Violence</del> - (Replica Firearm)

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**Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table**

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<b>Statute</b>	<b>Offense</b>	<b>Severity Level</b>	<b>Statutory Maximum (Months)</b>	<b>Exceeds Statutory Maximum At:</b>
609.713, subd. 3(a)	<del>Terroristic Threats of Violence</del> - (Replica Firearm)	1	12, and 1 Day	CHS 3

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**B. Technical Modifications Suggested by MSGC Staff**

The following are technical modifications to the Guidelines suggested by MSGC staff for continuity or clarification purposes.

**Commission Action:** Authorize technical changes to the Guidelines for the following offenses.

**1. Criminal Damage to Property**

**Description:** Absent a risk of bodily harm, felony criminal damage to property in the first degree is ranked at Severity Level 2. Criminal damage to property in the

second degree involves the intentional causes to damage because of the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability. Because the descriptive titles in section 5 are incomplete, they may cause confusion.

**Section 5.A Proposed Modifications:**

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<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
3	Damage to Property <u>1st Degree</u> (Risk Bodily Harm)	609.595, subd. 1(1)
2	Damage to Property <u>1st Degree</u> ( <del>Over \$500/Service to Public Common Carrier/\$1,000/\$500 and subsequent</del> )	609.595, subd. 1(2), (3), & (4)
1	Damage to Property <u>2nd Degree</u> (Motivated by Bias)	609.595 subd. 1a(a)

**Section 5.B Proposed Modifications:**

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<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
609.595 subd.1(1)	Damage to Property <u>1st Degree</u> (Risk Bodily Harm)	3
609.595 subd. 1(2)(3)(4)	Damage to Property <u>1st Degree</u> ( <del>Over \$500/Service to Public Common Carrier/\$1,000/\$500 and subsequent</del> )	2
609.595 subd. 1a(a)	Damage to Property <u>2nd Degree</u> (Motivated by Bias)	1**

\*\* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

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## 2. Expunged Records

**Description:** A comment in section 2.B related to access to expunged records should be updated to delete references to expired statutory language.

### Section 2.B Proposed Modifications:

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~~2.B.03. Effective before January 1, 2015, Minn. Stat. § 609A.03, subd. 7(b) applies to expungement orders subject to its limitations, and provides that:~~

~~Notwithstanding the issuance of an expungement order:~~

~~(1) an expunged record may be opened for purposes of a criminal investigation, prosecution, or sentencing, upon an ex parte court order;~~

~~...~~

~~Upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph....~~

~~Effective January 1, 2015, Minn. Stat. § 609A.03, subd. 7a(b), provides, in part that:~~

~~Notwithstanding the issuance of an expungement order:~~

~~(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correction services;~~

~~(2) when a criminal justice agency seeks access to a record that was sealed under section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information ; ... .~~