MINNESOTA

SENTENCING GUIDELINES COMMISSION

A Guidelines Comprehensive Review in a Snapshot: Examining Offense Severity Levels

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Background: Comprehensive Review

In fall of 2023, the Minnesota Sentencing Guidelines Commission (MSGC) began a comprehensive review of their Guidelines.

Some key questions the comprehensive review set out to answer were:

- How can the Guidelines maximize public safety?
- Why are departure rates so high for many offenses?
- Do severity levels reflect culpability and harm accurately?

Inspired by these questions, the Commission decided to include a review of offense Severity Levels as part of the broader comprehensive review.

Severity Levels

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Murder, 2nd Degree (Intentional; Drive-By-Shootings)	**11**	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[1]	426 *363-480*[1]
Murder, 2nd Degree (Unintentional) *Murder, 3rd Degree (Depraved Mind)*	**10**	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Murder, 3rd Degree (Drugs) *Assault, 1st Degree (Great Bodily Harm)*	**9**	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Agg. Robbery, 1st Degree *Burglary, 1st Degree (w/ Weapon or Assault)*	**8**	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI *Financial Exploitation of a Vulnerable Adult*	**7**	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[1,2]
Assault, 2nd Degree *Burglary, 1st Degree (Occupied Dwelling)*	**6**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary *Simple Robbery*	**5**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	**4**	12	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	**3**	12	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) *Check Forgery ($251-$2,500)*	**2**	12	12	13	15	17	19	21 *18-25*
Assault, 4th Degree *Fleeing a Peace Officer*	**1**	12	12	12	13	15	17	19 *17-22*

Severity Level Examination

Began with a plan to examine the Severity Levels of all offenses.

However, a budgetary forecast resulted in reduced funding opportunities for state agencies, including MSGC.

Reduced funding resulted in a truncated comprehensive review timeline

Truncated timeline meant refining offenses to be part of Severity Level examination to a subset of offenses

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	
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Murder, 2nd Degree (Unintentional) *Murder, 3rd Degree (Depraved Mind)*	**10**
Murder, 3rd Degree (Drugs) *Assault, 1st Degree (Great Bodily Harm)*	**9**
Agg. Robbery, 1st Degree *Burglary, 1st Degree (w/ Weapon or Assault)*	**8**
Felony DWI *Financial Exploitation of a Vulnerable Adult*	**7**
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Theft Crimes (Over $5,000)	**3**
Theft Crimes ($5,000 or less) *Check Forgery ($251-$2,500)*	**2**
Assault, 4th Degree *Fleeing a Peace Officer*	**1**

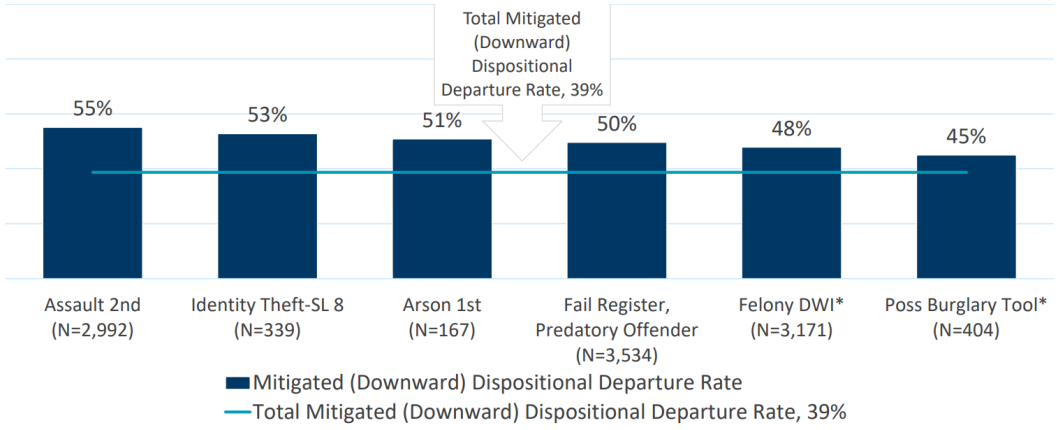
Offense Selection Criteria

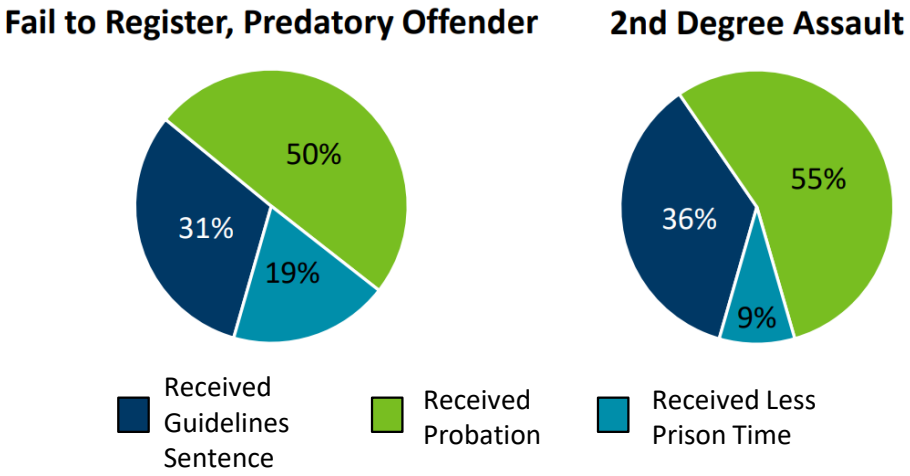
a) High departure rates associated with an offense

b) Perceived public interest for an offense to be reranked

c) Proportionality concerns with the current ranking of an offense

Three offense groups emerged.





Reranking Exercise Creation

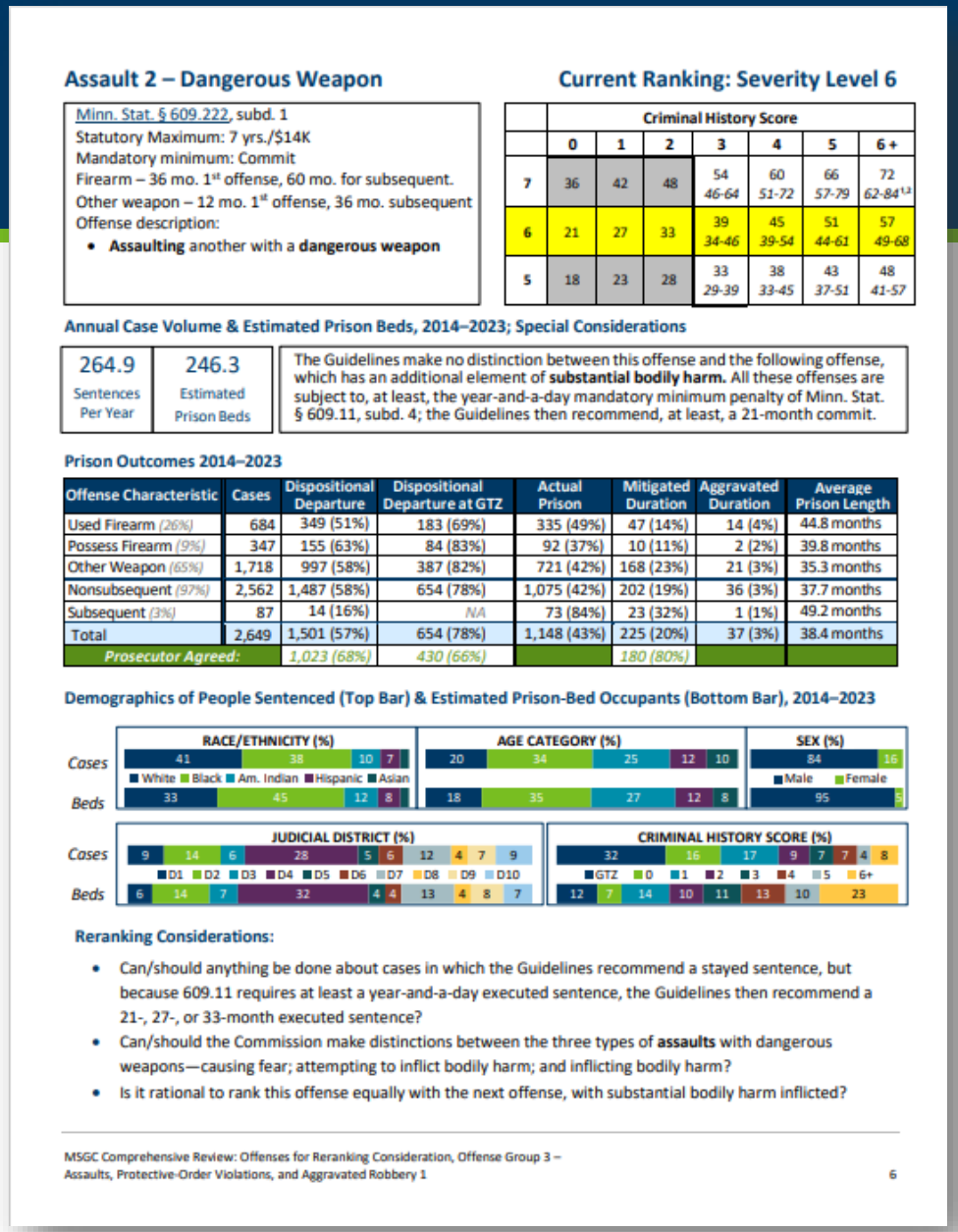
Pulling from previous ranking exercises, the staff created Offense Group packets for each offense.

These packets include:

a) A summary sheet containing any information the staff deemed useful in aiding Commissioner's reranking decisions; and

b) A reranking worksheet used for data collection purposes.

Methodology: Summary Sheet



Assault 2 – Dangerous Weapon — **Current Ranking: Severity Level 6**

Minn. Stat. § 609.222, subd. 1
Statutory Maximum: 7 yrs./$14K
Mandatory minimum: Commit
Firearm – 36 mo. 1st offense, 60 mo. for subsequent.
Other weapon – 12 mo. 1st offense, 36 mo. subsequent
Offense description:
- **Assaulting** another with a **dangerous weapon**

	Criminal History Score						
	0	1	2	3	4	5	6+
7	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[1,2]
6	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
5	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*

Annual Case Volume & Estimated Prison Beds, 2014–2023; Special Considerations

264.9 Sentences Per Year	246.3 Estimated Prison Beds

The Guidelines make no distinction between this offense and the following offense, which has an additional element of **substantial bodily harm.** All these offenses are subject to, at least, the year-and-a-day mandatory minimum penalty of Minn. Stat. § 609.11, subd. 4; the Guidelines then recommend, at least, a 21-month commit.

Prison Outcomes 2014–2023

Offense Characteristic	Cases	Dispositional Departure	Dispositional Departure at GTZ	Actual Prison	Mitigated Duration	Aggravated Duration	Average Prison Length
Used Firearm *(26%)*	684	349 (51%)	183 (69%)	335 (49%)	47 (14%)	14 (4%)	44.8 months
Possess Firearm *(9%)*	347	155 (63%)	84 (83%)	92 (37%)	10 (11%)	2 (2%)	39.8 months
Other Weapon *(65%)*	1,718	997 (58%)	387 (82%)	721 (42%)	168 (23%)	21 (3%)	35.3 months
Nonsubsequent *(97%)*	2,562	1,487 (58%)	654 (78%)	1,075 (42%)	202 (19%)	36 (3%)	37.7 months
Subsequent *(3%)*	87	14 (16%)	*NA*	73 (84%)	23 (32%)	1 (1%)	49.2 months
Total	2,649	1,501 (57%)	654 (78%)	1,148 (43%)	225 (20%)	37 (3%)	38.4 months
Prosecutor Agreed:		*1,023 (68%)*	*430 (66%)*		*180 (80%)*		

Demographics of People Sentenced (Top Bar) & Estimated Prison-Bed Occupants (Bottom Bar), 2014–2023

Reranking Considerations:

- Can/should anything be done about cases in which the Guidelines recommend a stayed sentence, but because 609.11 requires at least a year-and-a-day executed sentence, the Guidelines then recommend a 21-, 27-, or 33-month executed sentence?
- Can/should the Commission make distinctions between the three types of **assaults** with dangerous weapons—causing fear; attempting to inflict bodily harm; and inflicting bodily harm?
- Is it rational to rank this offense equally with the next offense, with substantial bodily harm inflicted?

MSGC Comprehensive Review: Offenses for Reranking Consideration, Offense Group 3 – Assaults, Protective-Order Violations, and Aggravated Robbery 1 — 6

Summary information:

- Statutory maximum
- Mandatory minimum

- Current Severity Level and durations on Grid

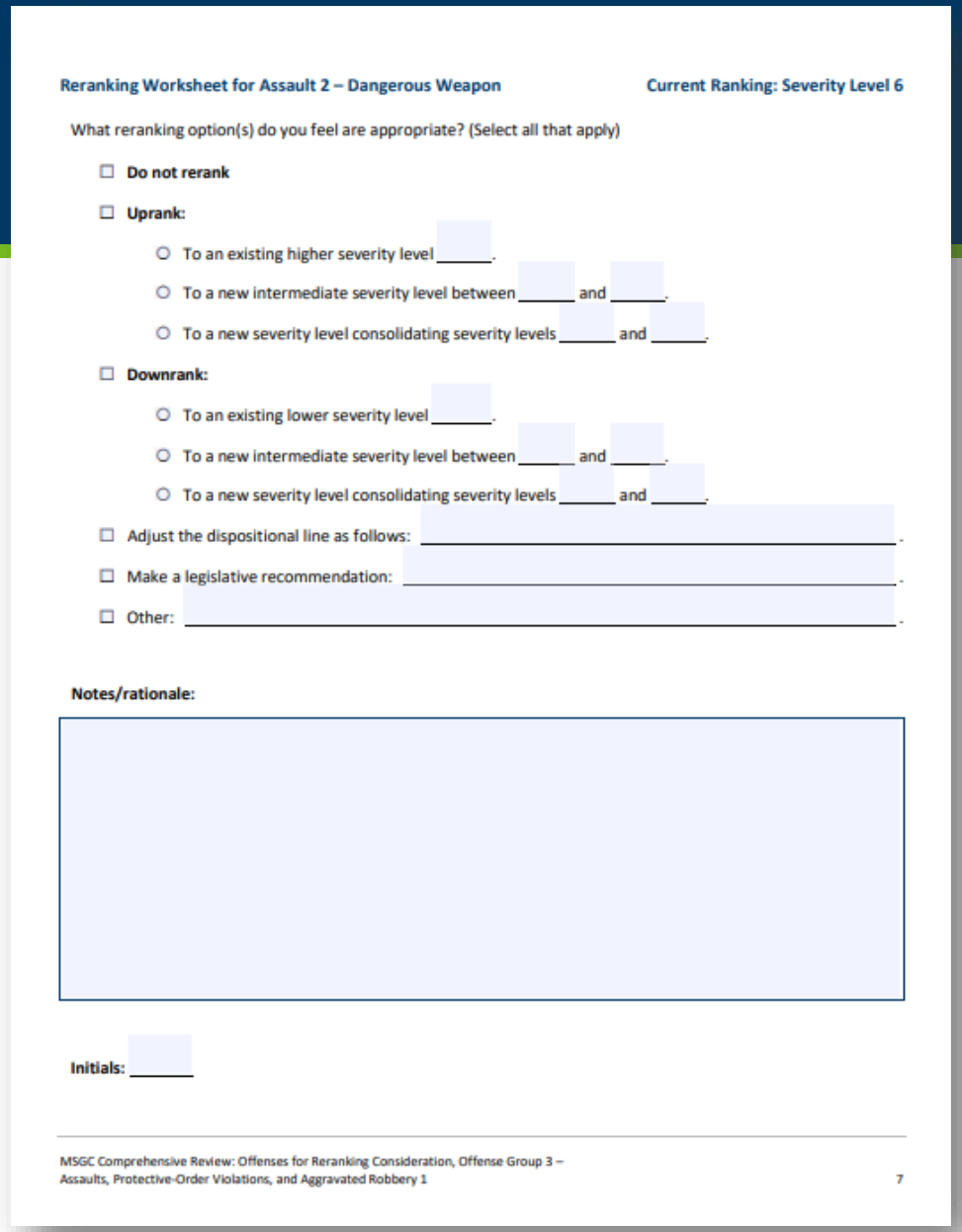
- Case volume
- Prison bed estimate
- Special considerations

- Dispositional outcomes by weapon type and multiplicity of crime

- Demographics and geography of defendants

- Reranking considerations

Methodology: Reranking Worksheet



Reranking Worksheet for Assault 2 – Dangerous Weapon **Current Ranking: Severity Level 6**

What reranking option(s) do you feel are appropriate? (Select all that apply)

- ☐ **Do not rerank**
- ☐ **Uprank:**
  - ○ To an existing higher severity level _____.
  - ○ To a new intermediate severity level between _____ and _____.
  - ○ To a new severity level consolidating severity levels _____ and _____.
- ☐ **Downrank:**
  - ○ To an existing lower severity level _____.
  - ○ To a new intermediate severity level between _____ and _____.
  - ○ To a new severity level consolidating severity levels _____ and _____.
- ☐ Adjust the dispositional line as follows: _____.
- ☐ Make a legislative recommendation: _____.
- ☐ Other: _____.

Notes/rationale:

Initials: _____

MSGC Comprehensive Review: Offenses for Reranking Consideration, Offense Group 3 – Assaults, Protective-Order Violations, and Aggravated Robbery 1 7

Reranking options:

- No rerank
- Uprank
- Downrank
- Adjust the dispositional line
- Make a legislative recommendation
- Other

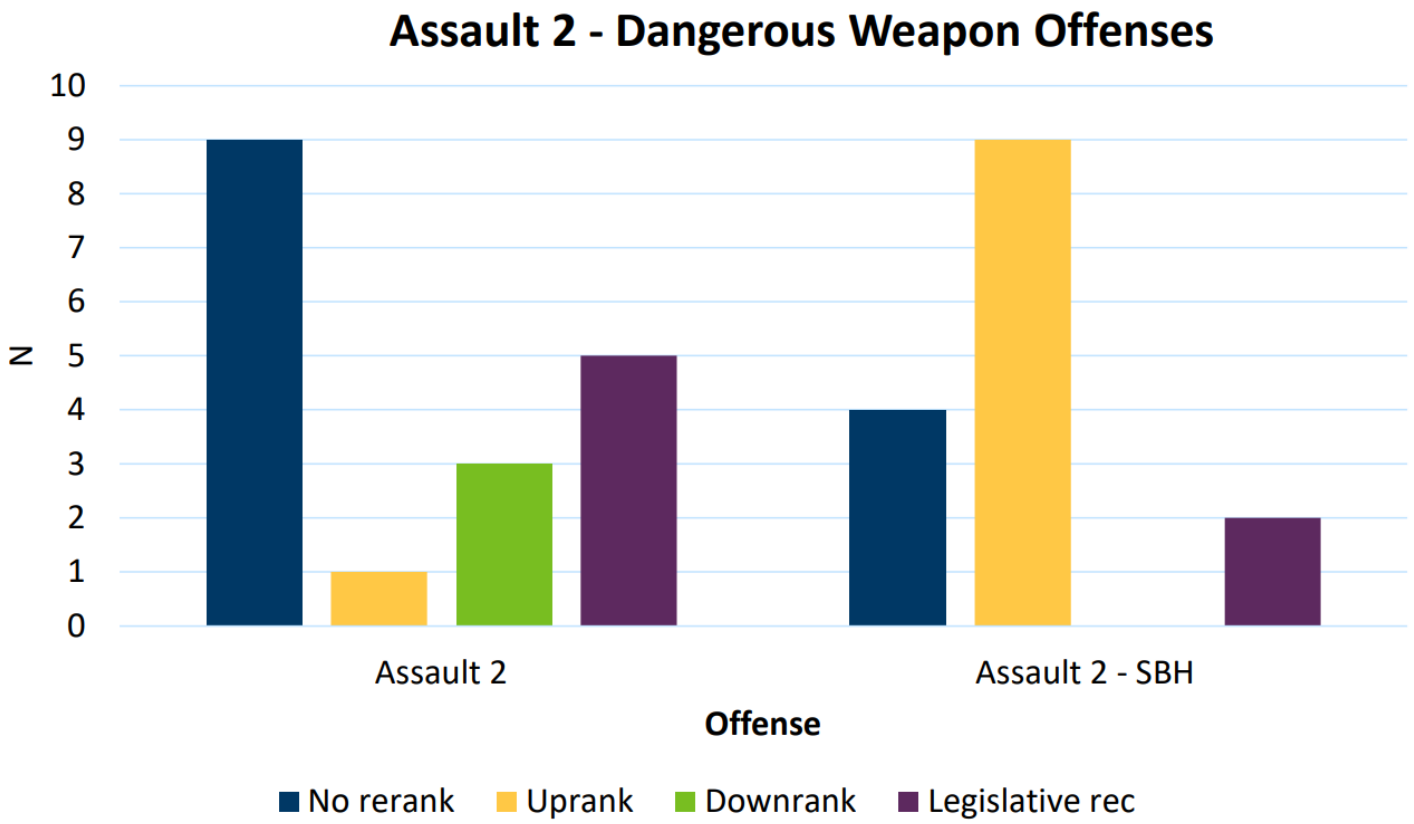
Reranking Process

Commissioners were given around two weeks to complete and submit worksheets to staff.

Staff compiled responses, identified themes from comments, and presented results for each Offense Group to the Commission.

Commissioners discussed these results as they were received in an attempt to build consensus around a reranking decision.

Results: Assault 2



- General agreement that Assault 2 and Assault 2 – Substantial Bodily Harm should not be ranked at the same Severity Level.
- Some Commissioners believed that Assault 2 offenses be ranked according to the type of weapon used to commit the offense, while others were opposed to doing so.
- Some Commissioners suggested ranking Assault 2 offenses according to the type of assault committed (i.e., causing fear, attempting to inflict bodily harm, inflicting bodily harm).

Identifying Consensus

Staff reviewed reranking worksheets and meeting notes and rewatched Commission meetings to identify offenses that appeared to have significant interest in reranking or making a legislative recommendation.

Table 3. Assault Identified Rerankings

Offense	Identified Change	Current SL	Identified SL
Uprank			
Assault 2-SBH – Dng Wpn	Uprank	SL 6	SL 7
Assault 3-SBH	Uprank	SL 4	SL 5
Assault 4-Peace Officer	Uprank	SL 1	SL 3
Assault 4-Firefighter/EMS	Uprank	SL 1	SL 3
Assault 4-Corr/Prosec/Judge/Prob	Uprank	SL 1	SL 3
Assault 4-Secure Treatment Facility	Uprank	SL 1	SL 3
Assault 4-Bias	Uprank	SL 1	SL 3
Domestic Assault Strangulation	Uprank	SL 4	SL 5
Downrank			
Assault 1-GBH	Downrank	SL 9	SL 8

Moving Forward

Tomorrow, the Commission plans to refine ranking decisions and recommendations to the Legislature.

Following tomorrow's meeting, staff will determine the impact of the proposed changes including:

- Prison bed impact
- Fiscal impact
- Demographic impact

The Commission will review analyses to refine and finalize reranking decisions.

Finally, a Public hearing will be held, and a report will be sent to the Legislature defining the reranking decisions and recommendations of the Commission.

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Thank you

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