

# Minnesota Sentencing Guidelines Commission

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## Possible Modifications to the Sentencing Guidelines – Legislative Actions for the Commission’s Consideration May 22, 2014

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Legislative actions need to be reviewed and considered by the Commission as possible modifications to the Sentencing Guidelines.

**A. Amended Offenses.** The following existing offenses were amended by the 2014 Legislature. In some cases, the amendments expanded definitional statements; in others, the amendments expanded the scope of the offense.

**Commission Action:** For each offense listed below, taking the amendment into consideration, the Commission must decide if the offense should be re-ranked and if there should be any amendments to the permissive consecutive offense list in Guidelines § 6.

### 1. Lawful Gambling Fraud (Minn. Stat. § 609.763 )

**Description:** Gambling fraud was expanded to include anyone who: a) knowingly tampers with or attempts to alter a component or device used in the conduct or play of electronic pull-tabs or electronic linked bingo as authorized under chapter 349 or attempts to convert legal gambling into illegal gambling at an establishment licensed under chapter 340A; or b) has unauthorized possession of an electronic pull-tab device, an electronic linked bingo device, or other component used in electronic pull-tabs or electronic linked bingo as authorized under chapter 349.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 240-S.F. 2336-1E</a> ; 2013 Minn. Stat. §§ <a href="#">609.763</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Currently, lawful gambling fraud is unranked. Felony offenses are offenses with a dollar amount of more than \$2,500, and have a three-year statutory maximum. Since 2001, 16 offenders have been sentenced and none have received an executed prison sentence. The severity levels assigned by the court have been: two cases at Severity Level 1; five cases at Severity Level 2; seven cases at Severity Level 3; and two cases at Severity Level 4. All of the offenders sentenced have had a Criminal History Score of 0.

**MSGC Staff Recommendation:** Considering the infrequency of the crime, it is recommended that the Commission continue to leave the offense unranked.

## 2. Fraudulent Finance Statements (Minn. Stat. § 609.7475)

**Description:** Fraudulent financial statements under Minn. Stat. § 609.7475 was amended to expand the list of victims for which the penalty would be enhanced from a gross misdemeanor to a felony. Under current law it is a gross misdemeanor to file or promote the filing of a record with the intent to harass or defraud another person. Under current law, the penalty is enhanced to a five-year felony if the person commits the offense with the intent to influence a juror; retaliate against a judicial officer, prosecutor, defense attorney, or officer of the court, because of that person's performance in a judicial proceeding; retaliate against a sheriff or deputy sheriff because of that person's performance of official duties; or retaliate against a county recorder because of that person's performance of official duties. The felony enhancement list was expanded to include police officers, chiefs of police, and employees of the Department of Corrections or a local correctional agency.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 306-S.F. 1360</a> 2013 Minn. Stat. § <a href="#">609.7475</a>
<b>Est. Bed Impact:</b> Minimal	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Felony filing false or improper financing statements is unranked. Therefore, the court must designate a severity level before sentencing. Since the crime went into effect in 2006, only two people have been sentenced for this offense (both in 2013). Each was ranked at Severity Level 3.

**Bed Impact:** It is not known if expanding the crime will result in more offenders being sentenced. Since only two offenders were sentenced in the last six years, it is assumed that any increase will be minimal. Both offenders from 2013 were sentenced on 12 counts each and the cases appeared to be related. Neither had a prior criminal record, but as each offense was sentenced, the offense was included in the criminal history resulting in a Criminal History Score of 11 when the last count was sentenced. Each offender received a prison sentence of 23 months. Each will serve over 15 months in prison (two-thirds term of imprisonment); therefore, each will occupy one prison bed for a little over a year. There is not enough reason to assume that there will be a person sentenced to prison every year, so the projected prison bed impact is minimal.

**MSGC Staff Recommendation:** Continue to leave the offense unranked until it is determined if changes to the statute result in more cases being sentenced.

## 3. Criminal Sexual Conduct (CSC) in the Fifth Degree (Minn. Stat. § 609.3451)

**Description:** Fifth-degree criminal sexual conduct offenses were amended in the following manner: a) Minn. Stat. § 609.135, subdivision 2, raised the length of stay for convictions of gross misdemeanor fifth-degree CSC from two years to six years; b) the statutory maximum for felony fifth-degree CSC was raised from five years to

seven years; and c) the definition of prior offenses that elevate a fifth-degree CSC offense to a felony to include: anyone who has two previous convictions for gross misdemeanor fifth-degree CSC, a felony provision of indecent exposure (Minn. Stat. § 617.23), any first- through fourth-degree CSC (Minn. Stats. §§ 609.342 to 345), criminal sexual predatory conduct (Minn. Stat. § 609.3453), and possession or dissemination of child pornography (Minn. Stat. § 617.247).

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 270-H.F. 1851-3E</a> ; 2013 Minn. Stat. §§ <a href="#">609.135</a> ; <a href="#">3451</a>
<b>Est. Bed Impact:</b> 2 beds. Minimal impact on local correctional resources.	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Currently, fifth-degree CSC is a felony with a five-year statutory maximum if the offender committed fifth-degree CSC under Minn. Stat. § 609.3451, subdivision 1, clause (2), and has previously been convicted of, or adjudicated delinquent for: 1) a violation of fifth-degree CSC, under Minn. Stat. § 609.3451, subdivision 1, clause (2); or 2) a violation of gross misdemeanor indecent exposure, under Minn. Stat. § 617.23, subdivision 2, clause (1). Felony fifth-degree CSC is ranked at a Severity Level G on the Sex Offender Grid. Offenders with a Criminal History Score of 4 or more are recommended prison (“Presumptive Commit”) according to the Guidelines.

**Bed Impact:** It is assumed that this change will lead to some increase in the number of offenders sentenced for felony-level fifth-degree CSC offenses. The effect of these proposed changes will be that offenders who commit any fifth-degree CSC will face felony penalties if they have a previous conviction for any of the specified offenses. Information from State Court Administration, Research and Evaluation indicates that over the five years from 2007 to 2011, an average of 123 offenders each year have been sentenced for the existing gross misdemeanor provisions of fifth-degree CSC.

**MSGC Staff Recommendation:** Either maintain the Severity Level G ranking or re-rank the offense at Severity Level F. The maximum presumptive sentence on the Grid for Severity Level F is 84 months (7 years). If the Commission were to rank the offense at Severity Level F, it would be ranked with offenses that have 10-year statutory maximums (fourth-degree CSC, subsequent possession of child pornography, and possession of child pornography by registered predatory offenders). See reference list below for statutory maximums of offenses ranked at Severity Level F and Severity Level G.

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>	<b>Statutory Maximum</b>
	<i>Criminal Sexual Conduct 5th Degree</i>	<i>609.3451, subd. 3</i>	<i>7 Years</i>

Severity Level	Offense Title	Statute Number	Statutory Maximum
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1(a)(b)(e)(f)	10 Years
	Possession of Child Pornography (Subsequent or by Predatory Offender)	617.247 subd. 4	10 Years
G	Solicitation of Children to Engage in Sexual Conduct	609.352, subd. 2	3 Years
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a	3 Years
	Indecent Exposure	617.23 subd. 3	5 Years
	Possession of Child Pornography	617.247 subd. 4	5 Years

#### 4. Expansion of List of Crimes of Violence (Minn. Stat. § 624.712)

**Description:** The list of crimes of violence contained in Minn. Stat. § 624.712, was expanded to include felony assault in the fifth degree under Minn. Stat. § 609.224, subd. 4; felony domestic assault under Minn. Stat. § 609.2242, subd. 4; and domestic assault by strangulation under Minn. Stat. § 609.2247. A person convicted of committing a crime of violence is prohibited from possession of firearms under Minn. Stat. § 609.165 or Minn. Stat. § 624.713, subd. 1(2).

Three offenses that were on the list of crimes of violence were removed: motor vehicle theft; theft from an abandoned, burning, or vacant building or from an area of destruction caused by civil disaster, riot, bombing or the proximity of battle; and third-degree burglary.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 260-H.F. 263-2E</a> ; 2013 Minn. Stat. §§ <a href="#">609.11</a> ; <a href="#">165</a> ; §§ <a href="#">624.712</a> ; <a href="#">713</a> , subd. 1(2)
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Possession of a firearm by a prohibited felon is ranked at Severity Level 6. However, because the offense has a 60-month statutory mandatory minimum, the presumptive sentence for all offenders is at least 60 months commitment to prison.

**MSGC Staff Recommendation:** It is recommended that the Commission retain the existing Severity Level 6 ranking for ineligible felon possessing a firearm. While the amendment alters which offenders are eligible to be charged for possession of a firearm by a prohibited felon, there are no changes to the penalty provisions.

**5. Accidents (Minn. Stat. § 169.09; § 609.21)**

**Description:** Terminology changed from “accident” to “collision” in Minn. Stat. § 169.09 for accidents and in Minn. Stat. § 609.21 for criminal vehicular homicide as described in the Senate Research bill summary below:

***Subdivision 1** removes the current standard that requires a driver to stop after an accident with an individual if the accident resulted in immediately demonstrable bodily injury or death of an individual. The new standard requires the driver to stop following a collision to investigate what was struck.*

***Subdivision 2** currently requires a driver to stop for an accident with another vehicle. The new language retains this requirement, but adds the requirement that the driver reasonably investigate what was struck.*

***Subdivision 3** currently requires a driver to provide identification information following an accident that results in bodily injury or death to an individual or in property damage. New language requires a driver to provide this information post collision if the driver knew or had reason to know the collision resulted in personal or property damage.*

***Subdivision 4** requires a driver to stop and investigate what was struck and provide information if the driver knows or has reason to know the collision resulted in damage to an unattended vehicle.*

***Subdivision 5** specifies the duties of a driver following a collision that damages fixtures on or near the highway.*

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 186-S.F. 1246-1E</a> ; 2013 Minn. Stat. § <a href="#">169.09</a> ; § <a href="#">609.21</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Minn. Stat. § 169.09, subdivision 14 establishes penalties for a driver who did not cause the accident, but fails to stop or report an injury. Minn. Stat. § 609.21, subdivision 1a establishes penalties for a driver who causes the accident, but fails to stop or report an injury. The table below displays the various penalty levels by statutory provision and the severity-level rankings assigned by the Guidelines.

Level of Harm	Driver not Cause of Accident- M. S.§ 169.09	Severity Level	Driver Cause of Accident- M. S.§ 609.21	Severity Level	Listed in § 6?
Death	3-year Stat. Max.	2	10-year Stat. Max.	8	Yes
Great Bodily Harm	2-year Stat. Max.	1	5-year Stat. Max.	5	Yes
Substantial Bodily Harm	Gross Misdemeanor	---	3-year Stat. Max.	3	Yes
Bodily Harm	Gross Misd.	---	Gross Misd.	---	

**MSGC Staff Recommendation:** It is recommended that the Commission retain the existing severity-level rankings for the felony offenses. Staff also recommends keeping the felony offenses on the list of offenses eligible for permissive consecutive sentences in § 6. Terminology was changed, but penalties remained the same.

#### 6. Predatory Offender Registration and Third Degree Criminal Sexual Conduct (Minn. Stat. § 243.166; § 609.344)

**Description:** The statute requiring predatory offenders to register was amended to clarify that offenders must register if they commit any prostitution offense involving a minor under Minn. Stat. §§ 609.322 or 344. It also provides that offenders who are civilly committed under Minn. Stat. § 253B.185 are required to register, as well as those committed under Chapter 253D.

Additionally, third-degree criminal sexual conduct (CSC) under Minn. Stat. § 609.344 was amended to move an offense with a five-year statutory maximum from the definition section into the penalty section. The general statutory maximum for third-degree CSC is 15 years. However, if the person was convicted under subdivision 1, paragraph b, and was at least 24 months older than the complainant, but not more than 48 months older, the statutory maximum is five years. The penalties are now separated into two distinct paragraphs in the penalty section.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 259-S.F. 2546-2E</a> ; 2013 Minn. Stat. § <a href="#">243.166</a> ; § <a href="#">609.344</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** There are no changes to the offense elements or penalty provisions of failure to register as a predatory offender.

Third-degree CSC under subdivision 1, paragraph b is ranked on the Sex Offender Grid at Severity Level D, regardless of the statutory maximum. The presumptive

sentence ranges from 36 months, “stayed” at a Criminal History Score 0 to 140 months, “commit” to prison at a Criminal History Score 6.

**MSGC Staff Recommendation:** It is recommended that the Commission retain the existing severity-level rankings for failure to register as a predatory offender because there were no changes to the offense elements or penalty provisions.

The Commission must decide whether to maintain the Severity Level D ranking for third-degree CSC under subdivision 1, paragraph b in which the offense was committed by an actor who is no more than 48 months older than the complainant and the statutory maximum is five years. It is recommended that the Commission rank the offense at Severity Level G because of the shorter statutory maximum. If the Commission were to rank the offense any higher than Severity Level G, the presumptive duration on the Sex Offender Grid would exceed the statutory maximum. For example, the presumptive duration at Severity Level F exceeds the statutory maximum of five years at Criminal History Score of 5. It is recommended that the Commission continue to list all third-degree CSC offenses on the list of offenses eligible for permissive consecutive sentences in § 6. The staff recommendations are outlined below.

**Suggested Guidelines Modifications:**

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

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
D	Criminal Sexual Conduct 3rd Degree	609.344 subd. 1(a)( <del>b</del> )(e)(f) or subd. 1(b) with ref. to subd. 2(1)
<u>G</u>	<u>Criminal Sexual Conduct 3rd Degree (actor between 24 mos and 48 mos older than complainant)</u>	<u>609.344 subd. 1(b) with ref. to subd. 2(2)</u>

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

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
609.344 subd. 1(a)( <del>b</del> )(e)(f) or subd. 1(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D

Statute Number	Offense Title	Severity Level
<u>609.344 subd. 1(b)</u> <u>with ref. to subd. 2(2)</u>	<u>Criminal Sexual Conduct 3rd Degree</u> <u>(actor between 25 months and 48 months</u> <u>older than complainant)</u>	<u>G</u>

**Section 6. Offenses Eligible for Permissive Consecutive Sentences  
(No Changes Recommended)**

Statute Number	Offense Title
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree

**7. Criminal Vehicular Homicide and Operation (Minn. Stat. §§ 609.21; 2113; 2114)**

**Description:** Mostly technical amendments were made to § 609.21, separating language for criminal vehicular homicide (CVH) from language for criminal vehicular injury (CVI) and arranging CVI offenses by level of harm. Subdivision 1 now pertains only to criminal vehicular homicide and subdivision 1a pertains to great bodily harm.

The amendment created a new Minn. Stat. § 609.2113, Criminal Vehicular Operation; Bodily Harm, which addresses criminal vehicular operations resulting in substantial bodily harm (subdivision 1) and bodily harm (subdivision 2).

Offenses involving harm to unborn children are now addressed in a new statute, Minn. Stat. § 609.2114, Criminal Vehicular Operation; Unborn Child. Subdivision 1 of this new section describes criminal vehicular operation resulting in death to an unborn child. Subdivision 2 describes criminal vehicular operation resulting in injury to an unborn child.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 180-S.F. 1571</a> 2013 Minn. Stat. § <a href="#">609.21</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The amendments recodified criminal vehicular homicide to be more clearly distinguished from criminal vehicular injury. There

were no changes to criminal definitions, offense elements or penalties for offenses involving persons.

Previously, the unborn child offenses were: death (10-year statutory maximum; Severity Level 8) and great bodily harm (five-year statutory maximum; Severity Level 5). Under the new statutes, Minn. Stat. § 609.2114, the unborn child offenses are: death (10-year statutory maximum) and injury (five-year statutory maximum).

The table below lists the previous provisions of Criminal Vehicular Homicide and Operation with the statutory maximums, levels of harm, and existing severity-level rankings.

<b>Statute</b>	<b>Level of Harm</b>	<b>Statutory Maximum</b>	<b>Severity Level</b>
609.21 Subd. 1a (a)	Death to human being or unborn child	10 years	8
609.21 Subd. 1a (b)	GBH to another or unborn child	5 years	5
609.21 Subd. 1a (c)	SBH to another	3 years	3

**MSGC Staff Recommendation:** Because most of the amendments were recodifications to existing offenses, it is recommended that the Commission retain the existing severity-level rankings and policies in the Guidelines related to criminal vehicular homicide and injury as presented below.

The Commission must also decide whether to retain the existing severity-level ranking for criminal vehicular operation; injury to an unborn child and whether it is to remain on the list of offenses allowable for permissive consecutive sentencing in § 6. The offense no longer must result in “great bodily harm” but was changed to “injury to an unborn child.” The statutory maximum for the offense remains at five years.

**Suggested Guidelines Modifications:**

**Section 2.B.3.g**

- g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or~~ 609.21, 609.2113, or 609.2114 two units each. There is no limit to the total

number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes.

**2.B.304.** *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, ~~or 609.21, 609.2113, or 609.2114~~ are also more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations....*

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

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
8	Criminal Vehicular Homicide <del>or Operation</del> (Death)	609.21, subd. 1a(a)
<u>8</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>609.2114, subd. 1</u>
5	Criminal Vehicular Homicide <del>or Operation</del> (Great Bodily Harm)	609.21, subd. 1a(b)
<u>5</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)*</u>	<u>609.2114, subd. 2</u>
3	Criminal Vehicular Homicide <del>or Operation</del> (Substantial Bodily Harm)	609.2113, subd. 1a(c)

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

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
609.21, subd. 1a(a)	Criminal Vehicular Homicide <del>or Operation</del> (Death)	8
609.21, subd. 1a(b)	Criminal Vehicular Homicide <del>or Operation</del> (Great Bodily Harm)	5
609.2113, subd. 1a(c)	Criminal Vehicular Homicide <del>or Operation</del> (Substantial Bodily Harm)	3
<u>609.2114, subd. 1</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>	<u>8</u>
<u>609.2114, subd. 2</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)*</u>	<u>5</u>

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

<b>Statute Number</b>	<b>Offense Title</b>
609.21, subd. 1a(a)	Criminal Vehicular Homicide (Death)
609.21, subd. 1a(b)	Criminal Vehicular <del>Homicide or Operation</del> (Great Bodily Harm)
609.2113, subd. 1a(c)	Criminal Vehicular <del>Homicide or Operation</del> (Substantial Bodily Harm)
<u>609.2114, subd. 1</u>	<u>Criminal Vehicular Operation (Death to an Unborn Child)</u>
<u>609.2114, subd. 2</u>	<u>Criminal Vehicular Operation (Injury to an Unborn Child)*</u>

\* The Commission must decide whether to retain the existing severity-level ranking for criminal vehicular operation; injury to an unborn child and whether it remains on the list of offenses allowable for permissive consecutive sentencing in § 6. The offense was changed from “great bodily harm” to “injury to an unborn child.” The statutory maximum for the offense remains five years.

## 8. Criminal Record Expungement (Minn. Stat. § 609A.20)

**Description:** Laws related to the expungement of criminal records were amended to allow the court to expunge juvenile arrest and delinquency proceedings if it determined that the expungement would benefit the subject and the benefit would not be detrimental to public safety. Business screening services were ordered to delete criminal records if it was known that the record had been sealed, expunged, or was the subject of a pardon. The eviction law was amended giving the court authority to expunge actions in which the defendant prevailed without an additional action required.

Certain records will be automatically expunged without filing a petition when the prosecutor agrees unless the court finds that it would be detrimental to public safety. The law requires court administration to notify the petitioner of entities receiving the expungement order. Those entities are then required to send a letter to the petitioner confirming that the record was expunged.

The circumstances under which a person may petition to have his or her criminal record expunged were expanded to a petitioner who 1) successfully completed a diversion program or stay of adjudication and has not been charged with a new crime for at least one year since completion of the program or stay of adjudication; 2) was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor and has not been convicted of a new crime for at least two years since discharge of the sentence; 3) was convicted of or received a stayed sentence for a gross misdemeanor and has not been convicted of a new crime for at least four years since discharge of the sentence; or 4) was convicted of or received a stayed sentence for certain felony offenses and has not been convicted of a new crime for at least five years since discharge of the sentence.

Expungement orders effective on or after January 1, 2015, “may be opened, used or exchanged between criminal justice agencies *without a court order* for purposes of initiating, furthering or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correctional services.” Ex parte orders are necessary until that time..

<b>Effective Date:</b> January 1, 2015	<b>Reference:</b> <a href="#">Chapter 246-H.F. 2576</a> 2013 Minn. Stat. § <a href="#">260B.198</a> ; §§ <a href="#">609A.02</a> ; <a href="#">609A.03</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Comment 2.B.03 references the process for using expunged records for Guidelines criminal history purposes.

**MSGC Staff Recommendation:** Modify the commentary to clarify the procedures for the use of expunged records for sentencing purposes before January 1, 2015 and on or after January 1, 2015.

**Suggested Guidelines Modifications:**

*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 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;*

*...*

**9. Perjury (Minn. Stat. § 609.48)**

**Description:** A new law related to court documents was enacted under Minn. Stat. § 358.166. The law states that a court document does not need to be notarized. Signing a document filed with the court constitutes “verification upon oath or affirmation.” A person who signs a court document knowing that it is false is guilty of perjury under Minn. Stat. § 609.48.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 204-H.F. 2668</a> ; 2013 Minn. Stat. §§ <a href="#">609.48</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Perjury is ranked at Severity Level 5 for perjury related to a felony trial and Severity Level 4 for perjury related to a non-felony trial. Perjury is not listed in § 6; Offenses eligible for permissive consecutive sentences.

**MSGC Staff Recommendation:** It is recommended that the Commission retain the existing severity-level rankings.

**B. New Offense.** The following new offenses for violations of medical use of marijuana were enacted by the Legislature during the 2014 legislative session.

**Commission Action:** One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the list in Guidelines § 6; offenses eligible for permissive consecutive sentences. The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

For each new offense listed below, the Commission must decide:

- What severity level should be assigned?
- Should the offense be eligible for a permissive consecutive sentence?

- **Criminal Penalties for Medical Marijuana (Minn. Stat. § 152.33)**

**Description:** New laws were enacted related to medical use of marijuana allowing state-licensed manufacturers to produce marijuana for patients with qualifying medical conditions. Criminal penalties for violations of medical use of marijuana are provided in Minn. Stat. § 152.33.

1. Intentional Diversion (subdivision 1): A medical marijuana organization or agent who intentionally sells or otherwise transfers marijuana in exchange for anything of value to an unauthorized person is guilty of a felony with a two-year statutory maximum.
2. Diversion by Patient, Registered Designated Caregiver, or Parent (subdivision 2): A patient, caregiver, parent, or legal guardian who sells or otherwise transfers marijuana in exchange for anything of value to an unauthorized person is guilty of a felony with a two-year statutory maximum.
3. False Statement (subdivision 3): A person who makes a false statement to law enforcement about medical use of marijuana to avoid arrest or prosecution is guilty of a misdemeanor. If the person convicted of violating this provision is a qualifying patient or designated caregiver, the person is disqualified from further participation.

4. Submission of False Records (subdivision 4): A practitioner who knowingly submits false records or documentation required by the commissioner to register as a manufacturer of medical cannabis is guilty of a felony.
5. Violation by Health Care Practitioner (subdivision 5): A health care practitioner who knowingly refers patients to a manufacturer or to a designated caregiver, who advertises as a manufacturer, or who issues certifications while holding a financial interest in a manufacturer is guilty of a misdemeanor.

<b>Effective Date:</b> The day following final enactment	<b>Reference:</b> <a href="#">Chapter 311-S.F. 2470</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** Each new felony offense has a statutory maximum of two years. The presumptive sentence for offenses ranked at Severity Level 1 and Severity Level 2 range from 12 months and 1 day, “stayed” to 21 months, “commit.”

Below is a select list of offenses ranked at Severity Level 1 and Severity Level 2 that the Commission may wish to consider when ranking the new felony marijuana offenses. The Commission must also decide if the new offenses should be included on the list of offenses eligible for permissive consecutive sentences in § 6.

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>	<b>Statutory Maximum</b>
2	Aggravated Forgery (Misc. Non-Check)	<a href="#">609.625</a> ; <a href="#">609.635</a> ; <a href="#">609.64</a>	3-10 years
	Controlled Substance in the 5th Degree	<a href="#">152.025</a>	5 years
	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	<a href="#">297D.09</a> , subd. 1	7 years
	Sale of Synthetic Cannabinoids	<a href="#">152.027</a> , subd. 6(c)	5 years
1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	<a href="#">297D.09</a> , subd. 1	7 years
	Failure to Affix Stamp on Schedule IV Substances	<a href="#">297D.09</a> , subd. 1	7 years
	False Declaration	<a href="#">256.984</a>	5 years
	False Information - Certificate of Title Application	<a href="#">168A.30</a> , subd. 1	4 years
	Forgery	<a href="#">609.63</a>	3-5 years
	Fraudulent Statements	<a href="#">609.645</a>	3 years
	Sale of Simulated Controlled Substance	<a href="#">152.097</a>	3 years

**C. New and Amended Gross Misdemeanor Offenses.** The following gross misdemeanor offenses were amended or enacted by the Legislature during the 2014 legislative session and require no action by the Commission.

**Commission Action:** None.

**1. Electronic Cigarettes (Minn. Stat. §§ 609.685; 609.6855)**

**Description:** Electronic delivery devices or “e-cigarettes” were added into the provisions in law regulating the possession of tobacco products in schools, municipal licensing of tobacco products, the sale of self-service products, and the sale of tobacco products to children. Electronic delivery devices are added to Minn. Stat. §§ 609.685, and 6855, which establish penalties for the sale or furnishing of tobacco or nicotine delivery products to children. First offenses are misdemeanors and subsequent offenses are gross misdemeanors.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 291-H.F. 24023238</a> 2013 Minn. Stat. §§ <a href="#">609.685</a> ; <a href="#">6855</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The gross misdemeanor offense will be eligible to be counted as one unit in the calculation of the misdemeanor/gross misdemeanor criminal history point. Four units are needed to equal one misdemeanor/gross misdemeanor point as described in § 2.B.3 of the Guidelines.

**MSGC Staff Recommendation:** No action required.

**2. Allowing Ineligible Person Access to Firearms (Minn. Stat. §§ 624.7144)**

**Description:** A new gross misdemeanor offense was added to law for a person who allows an abusing party access to a firearm.

<b>Effective Date:</b> August 1, 2014	<b>Reference:</b> <a href="#">Chapter 213-H.F. 3238</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The gross misdemeanor offense will be eligible to be counted as one unit in the calculation of the misdemeanor/gross misdemeanor criminal history point. Four units are needed to equal one misdemeanor/gross misdemeanor point as described in § 2.B.3 of the Guidelines.

**MSGC Staff Recommendation:** No action required.

**D. Technical Change Required.** The following offenses were amended during the 2014 Legislative Session or previous legislative sessions and require technical changes to the Guidelines.

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

**1. Camping Contracts (Minn. Stat. §§ 82A.03; 13; 25)**

**Description:** Registration requirements under Minn. Stat. § 82A.03 was removed as a criminal penalty from membership camping practices.

<b>Effective Date:</b> Following final enactment	<b>Reference:</b> <a href="#">Chapter 222</a> 2013 Minn. Stat. §§ <a href="#">82A.03</a> ; <a href="#">25</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The statute is listed as an unranked offense in § 5A and 5B.

**MSGC Staff Recommendation:** Delete reference to Minn. Stat. 82A.03, as outlined below.

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

Severity Level	Offense Title	Statute Number
Unranked	Sale of Membership Camping Contracts	<del>82A.03</del> ; 82A.13; 82A.25

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

Statute Number	Offense Title	Severity Level
<del>82A.03</del> ; 82A.13; 82A.25	Sale of Membership Camping Contracts	Unranked

**2. Rank Fraudulent Instrument or Entry for Procuring a Certificate of Title (Minn. Stat. § 508.80)**

**Description:** Fraudulently procuring a certificate of title under Minn. Stat. 508.80 is a felony with a 5-year statutory maximum. It has been inadvertently left unranked by the Commission since the inception of the Guidelines in 1980. The law has been in effect since 1905.

<b>Effective Date:</b> May 1, 1980. Inadvertently unranked.	<b>Reference:</b> <a href="#">1905 Laws of MN</a> 2013 Minn. Stat. §§ <a href="#">508.80</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The statute is not listed in § 5A and 5B.

**MSGC Staff Recommendation:** Rank the offense at Severity Level 1 along with false information on a certificate of title application under Minn. Stat. 168A.30, which has a 4-year statutory maximum, as outlined below.

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

Severity Level	Offense Title	Statute Number
<u>1</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>508.80</u>

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

Statute Number	Offense Title	Severity Level
<u>508.80</u>	<u>Fraudulent Instrument or Entry for Procuring a Certificate of Title</u>	<u>1</u>

**3. Pipeline Safety (Minn. Stat. § 299J)**

**Description:** The Guidelines list felony failure to report emergency release by a pipeline operator under Minn. Stat. § 299J.07, in the Guidelines. The offense has a 7-year statutory maximum. It is an unranked offense; however, another pipeline safety offense exists under Minn. Stat. § 299J.15: improper disposal of a pipeline, which has a 5-year statutory maximum.

<b>Effective Date:</b> August 1, 1987. Inadvertently unranked.	<b>Reference:</b> <a href="#">1987 Laws of MN</a> 2013 Minn. Stat. §§ <a href="#">299J.15</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The statute is not listed in §§ 5A and 5B.

**MSGC Staff Recommendation:** Change the reference in Guidelines § 5A and 5B for pipeline safety to reference the entire chapter of 299J, as outlined below.

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

Severity Level	Offense Title	Statute Number
Unranked	Pipeline Safety	299J-07, subd. 2

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

Statute Number	Offense Title	Severity Level
299J-07, subd. 2	Pipeline Safety	Unranked

#### 4. Animal Fighting (Minn. Stat. § 343.31)

**Description:** Felony animal fighting, under Minn. Stat. § 343.31, is an unranked offense in the Guidelines.

<b>Effective Date:</b> August 1, 2005	<b>Reference:</b> <a href="#">2005 Laws of MN</a> 2013 Minn. Stat. §§ <a href="#">343.31</a>
<b>Est. Bed Impact:</b> None	<b>Racial Disparity Impact:</b> None expected.

**Guidelines Considerations:** The citation in §§ 5A and 5B are incorrect. The statute was amended in 2005 and the felonies were moved to subdivision 1, paragraph (a).

**MSGC Staff Recommendation:** Correct the reference in Guidelines §§ 5A and 5B, as outlined below.

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

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
Unranked	Animal Fighting	343.31 <u>subd. 1</u> (a)( <del>b</del> )

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

<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
343.31 <u>subd. 1</u> (a)( <del>b</del> )	Animal Fighting	Unranked