

## **Hernandizing Tip Sheet**

Minnesota Sentencing Guidelines and Commentary Section 2.B.1.e states:

**“Multiple offenses sentenced at the same time before the same court must be sentenced in the order they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced (also known as “Hernandizing”)...”**

What exactly does this mean?

- This is the official explanation of the term “Hernandizing,” which is the process of applying criminal history to multiple offenses being sentenced on the same day in front of the same court.
- Once an offense receives an imposed sentence or a Stay of Imposition it is eligible for *consideration* as criminal history, “Hernandizing”, on the next offense being sentenced.

**Question: The offender is being sentenced for multiple felony offenses on the same day before the same judge. Can they be “Hernandized?”**

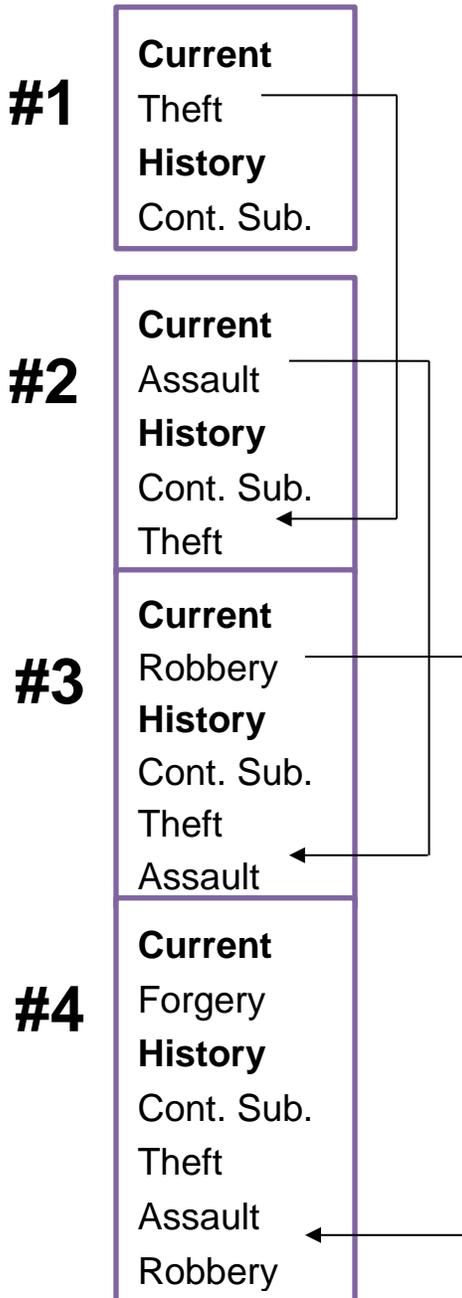
**Answer: Two issues must be clarified first – are there either of these exceptions?**

- Is this a single course of conduct with multiple sentences involving a felony burglary (Minn. Stat. § 609.582), kidnapping (Minn. Stat. § 609.25), or the offense of Methamphetamine Involving a Child or Vulnerable Adult (Minn. Stat. §152.137); **or**
- Is this a single course of conduct with multiple victims? *Think Criminal Vehicular Operation where a single impact can result in multiple victims.*

If neither of the exceptions is applicable, proceed with “Hernandizing” on each of the offenses, keeping in mind that the Level of Sentence is still applicable for where the offense is used in criminal history (see Level of Sentence Tip Sheet).

**REMEMBER** this basic rule: once a felony offense receives an imposed sentence (Stay of Execution, Stay of Imposition, or Commit) it becomes eligible to be included in criminal history on the next offense being sentenced; its use as criminal history depends only on whether either of the exceptions outlined above exists. (See EWS Tip Sheet for Hernandizing)

## Hernandizing Example: Multiple, Unrelated Offenses



✚ The worksheets are completed in offense date order. Once the first offense receives and imposed sentence or a Stay of Imposition it is placed in criminal history on the next offense, and so on.

✚ If the offense dates are the same, only two issue need to be considered:

1. Will multiple sentences be pronounced?
2. Does an exception exist?

✚ In this example, we could “Hernandize” all of the offenses if multiple sentences were imposed and there were no exceptions.

On future worksheets these offenses could all be included if they each received an imposed sentence or a Stay of Imposition. See *Sentencing Guidelines and Commentary*, Section 2.B for criminal history calculation.

## Hernandizing Exception: Single Course of Conduct / Multiple Sentences Involving a Kidnapping, Burglary or Meth Offense Involving a Child or Vulnerable Adult

This type of exception involves specific policies regarding “Hernandizing.”

*Minnesota Sentencing Guidelines and Commentary* Section 2.B.1.e.(1) states:

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minn. Stat. §§ 152.137, 609.585, or 609.251, the conviction for the “earlier” offense does not increase the criminal history score for the “later” offense.

- ✓ When, during the commission of a burglary, kidnapping, or methamphetamine involving a child or vulnerable adult offense, the offender commits an additional felony offense, multiple sentences can be given, but they will not be “Hernandized.”
- ✓ In this example, there is no “Hernandizing” between current offenses; the Burglary 3<sup>rd</sup> degree is not “Hernandized” on the Theft over \$5,000 offense.

|                |          |                |          |
|----------------|----------|----------------|----------|
| <b>Current</b> |          | <b>Current</b> |          |
| Burglary 3     | 4        | Theft \$5,000  | 3        |
| <b>History</b> |          | <b>History</b> |          |
| Custody        | 1        | Custody        | 1        |
| Juvenile       | 0        | Juvenile       | 0        |
| M/GM           | 0        | M/GM           | 0        |
| Felony         | 1        | Felony         | 1        |
| <b>TOTAL</b>   | <b>2</b> | <b>TOTAL</b>   | <b>2</b> |

***No “Hernandizing” – same criminal history***

For future worksheets, only the offense at the highest severity level from this course of conduct could be listed. See *Sentencing Guidelines and Commentary*, Section 2.B.1.d(1) for criminal history calculation.

One tip: look at the worksheet from the previous offenses. If the criminal history is the same on both, this policy was applied. However, if the burglary is “Hernandized,” then you will count both on future worksheets.

## **Hernandizing Exception: Single Course of Conduct with Multiple Victims**

*Minnesota Sentencing Guidelines and Commentary* Section 2.B.1.e.(2) states:

When multiple current convictions arise out of a single course of conduct in which there were multiple victims, weights are only given to the two offenses at the highest severity level.

- ✓ The offender can be sentenced for multiple offenses resulting from a single course of conduct when there are multiple victims.
- ✓ Only the two highest offenses from the “earlier” offenses will be “Hernandized” onto the “later” offenses.
- ✓ In this example, worksheets are created in the order the offenses occurred in, and “Hernandizing” occurs in the following manner:
  - Count 1 is “Hernandized” onto Count 2
  - Counts 1 and 2 are “Hernandized” onto Count 3 – these are the highest 2 severity levels.
  - Counts 2 and 3 are “Hernandized” onto Count 4 – these are now the highest 2 severity levels.
  - Counts 2 and 3 are “Hernandized” onto Count 5 – these are now the highest 2 severity levels.

| Sent. #1  | Sent. #2  | Sent. #3  | Sent. #4  | Sent. #5  |
|---|---|---|---|---|
| <b>Current</b><br>CVO-SBH 3                                     | <b>Current</b><br>CVO-SBH 5                                     | <b>Current</b><br>CVO-SBH 5                                     | <b>Current</b><br>CVO-SBH 5                                     | <b>Current</b><br>CVO-SBH 5                                     |
| <b>History</b><br>Custody 1<br>Juvenile 0<br>M/GM 1<br>Felony 1 | <b>History</b><br>Custody 1<br>Juvenile 0<br>M/GM 1<br>Felony 2 | <b>History</b><br>Custody 1<br>Juvenile 0<br>M/GM 1<br>Felony 3 | <b>History</b><br>Custody 1<br>Juvenile 0<br>M/GM 1<br>Felony 3 | <b>History</b><br>Custody 1<br>Juvenile 0<br>M/GM 1<br>Felony 3 |
| <b>TOTAL 3</b>  | <b>TOTAL 4</b>  | <b>TOTAL 5</b>  | <b>TOTAL 5</b>  | <b>TOTAL 5</b>  |

*It is important to remember that this is an example of how these offenses could be sentenced. Regardless of what the felonies are, or what order they occur in, the basic rule is still applicable.*

On future worksheets, only the two offenses at the highest severity level from this course of conduct can be listed. See *Sentencing Guidelines and Commentary*, Section 2.B.1.d(2) for criminal history calculation.

One tip: look at the worksheet from the previous offenses. How many were “Hernandized?” If only two were, this policy was applied. However, if all of them were “Hernandized,” then you will count all of them.