



**Minnesota Sentencing Guidelines Commission
Summary of Felony Driving While Impaired Modifications
to the Sentencing Guidelines and Commentary**

Modifications Effective August 1, 2002

Modifications to the Sentencing Guidelines and Commentary following the passage of the felony Driving While Impaired crime – Effective August 1, 2002

II. Determining Presumptive Sentences

A. Offense Severity:

Felony offenses are arrayed into ~~ten~~ eleven levels of severity, ranging from low (Severity Level I) to high (Severity Level ~~X~~ XI). First degree murder is excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity. The most frequently occurring offenses within each severity level are listed on the vertical axis of the Sentencing Guidelines Grid. The severity level for infrequently occurring offenses can be determined by consulting Section V, entitled "Offense Severity Reference Table."

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***II.A.08.** Knowing Transfer of Communicable Disease, Minn. Stat. § 609.2241, is prosecuted under section 609.17, 609.185, 609.19, 609.221, 609.222, 609.223, 609.2231, or 609.224. The severity level ranking for this crime would be the same as the severity level ranking of the crime for which the offender is prosecuted. For example, if the offender commits this crime and is convicted under Assault in the 1st Degree, Minn. Stat. § 609.221, the appropriate severity level ranking would be severity level ~~VIII~~ IX.*

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B. Criminal History:

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Multiple offenses are sentenced in the order in which they occurred. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.

- a. The weight assigned to each prior felony sentence is determined according to its severity level, as follows:

Severity Level I - II = ½ point;

Severity Level III - V = 1 point;

Severity Level VI – ~~VII~~ VIII = 1 ½ points;

Severity Level ~~VIII~~ IX – ~~X~~ XI = 2 points; and

Murder 1st Degree = 2 points.

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II.B.202. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. However, one gross misdemeanor offense--~~aggravated driving while intoxicated~~ impaired--is particularly relevant in sentencing cases of criminal vehicular homicide or injury and first degree (felony) driving while impaired. Because of its particular relevance in cases of this nature, a custody status point shall be assigned if the offender is under probation, jail, or other custody supervision following a gross misdemeanor conviction under section 169A.20, 169A.31, 169.121, 169.1211 ~~or~~ 169.129, or 360.0752 when the felony for which the offender is being sentenced is criminal vehicular homicide or injury or first degree (felony) driving while impaired, and the ~~criminal vehicular~~ offense occurred while under that supervision.*

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3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI violations.

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II.B.301. *The Commission established a measurement procedure based on units for misdemeanor and gross misdemeanor sentences which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of*

felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors and gross misdemeanors are assigned one unit. An offender must have a total of four units to receive one point on the criminal history score. No partial points are given--thus, a person with three units is assigned no point value.

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, ~~the traffic offenses of driving while intoxicated impaired and aggravated driving while intoxicated~~ traffic offenses have particular relevance to the offenses of criminal vehicular homicide or injury and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129 or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury or first degree (felony) driving while impaired. These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.

II.B.302. *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129 or 360.0752 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 violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI misdemeanor units. If there are less than four units, add in any DWI units. Four or more units would equal one point. Only DWI units can be used in calculating additional points. Each set of four DWI units would equal an additional point. For example, if an offender had two theft units and six DWI units, the theft would be added to the two DWI units to equal one point. The remaining four DWI units would equal a second point. In a second example, if an offender had six theft units and six DWI units, the first four theft units would equal one point. Four of the DWI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI units for a third point. The total misdemeanor score would be two.*

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score.

Comment

II.B.601. *There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$200 but less than \$500 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.*

A first-time first degree (felony) driving while impaired (DWI) offense involves a DWI violation within ten years of the first of three or more prior impaired driving incidents. Because the DWI priors elevated this offense to the felony level, they should be excluded from the criminal history score. Those predicate offenses should also be excluded for a current felony DWI that is a felony because the offender has a prior felony DWI, but the prior Felony DWI would be counted as part of the felony criminal history score.

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C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is executed from those for whom the presumptive sentence is stayed. For cases contained in cells above and to the right of the line, the sentence should be executed. For cases contained in cells below and to the left of the line, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence.

Pursuant to M.S. § 609.342, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. Sentencing a person in a manner other than that described in M.S. § 609.342, subdivision 2 is

a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd.1 (a)) and there was a previous conviction for a felony burglary before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

Similarly, when the current conviction offense is a severity level VI drug crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or received a similar disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. The policy regarding previous dispositions under section 152.18 applies only if the previous dispositions occurred on or after August 1, 1999.

When the current conviction is for felony DWI, and the offender has a prior conviction for a felony DWI, the presumptive disposition is Commitment to the Commissioner of Corrections.

In addition, the presumptive disposition for an escape from an executed sentence and for a felony assault committed by an inmate serving an executed term of imprisonment is Commitment to the Commissioner of Corrections. It is presumptive for these offenses to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II.F. Presumptive Consecutive Sentences).

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells above the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge

which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge pursuant to Minn. Stat. § 244.10, subd. 2, and section D of these guidelines.

E. Mandatory Sentences:

When an offender is sentenced for first degree (felony) driving while impaired, the court must impose a sentence of at least 36 months. The presumptive disposition is determined by the dispositional line on the Sentencing Guidelines Grid. For cases contained in cells above and to the right of the line, the sentence should be executed. For cases contained in cells below and to the left of the line, the sentence should be stayed unless the offender has a prior conviction for a felony DWI, in which case the presumptive disposition is Commitment to the Commissioner of Corrections. In addition, when the court commits a person convicted of first degree (felony) driving while impaired to the custody of the commissioner of corrections, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.

Comment

***II.E.01.** The types of offenses that may involve a mandatory minimum sentence or a mandatory sentence include offenses involving dangerous weapons, a second or subsequent criminal sexual conduct offense, a second or subsequent controlled substance offense, first degree (felony) driving while impaired, and certain 2nd and 3rd degree murder offenses when the offender has a prior conviction for a "heinous" offense as described by statute.*

***II.E.02.** For example, according to Minn. Stat. § 609.11, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. However, according to the guidelines, the presumptive duration is the mandatory minimum or the duration provided in the appropriate cell of the grid, whichever is longer. Therefore, for someone convicted of Assault in the Second Degree with no criminal history score, the guidelines presume a 21 month prison duration based on the appropriate cell of the grid found at severity level VI. The Commission believes this duration is more appropriate than the 48 month prison duration that would be recommended if this crime were ranked at severity level ~~VII~~ VIII which is the first severity level ranked completely above the dispositional line.*

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	X XI	306 299-313	326 319-333	346 339-353	366 359-373	386 379-393	406 399-413	426 419-433
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	IX X	150 144-156	165 159-171	180 174-186	195 189-201	210 204-216	225 219-231	240 234-246
<i>Criminal Sexual Conduct, 1st Degree²</i> <i>Assault, 1st Degree</i>	VIII IX	86 81-91	98 93-103	110 105-115	122 117-127	134 129-139	146 141-151	158 153-163
<i>Aggravated Robbery 1st Degree</i>	VII VIII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
<i>Felony DWI</i>	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i>	VI	21	27	33	39 37-41	45 43-47	51 49-53	57 55-59
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 31-35	38 36-40	43 41-45	48 46-50
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 23-25	27 26-28	30 29-31
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20	21 20-22	23 22-24
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. **Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections II.C. **Presumptive Sentence** and II.E. **Mandatory Sentences**.

¹ One year and one day

² Pursuant to M.S. § 609.342, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months (see II.C. **Presumptive Sentence** and II.G. **Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**).

Effective August 1, 2002

**Examples of Executed Sentences (Length in Months) Broken Down by:
Specified Minimum Term of Imprisonment and Specified Maximum Supervised Release Term**

Offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will no longer earn good time. In accordance with Minn. Stat. § 244.101, offenders will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. This provision requires that the court pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court shall also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison. The court's explanation is to be included in a written summary of the sentence.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	78	52	26
13	8 ² / ₃	4 ¹ / ₃	86	57 ¹ / ₃	28 ² / ₃
15	10	5	88	58 ² / ₃	29 ¹ / ₃
17	11 ¹ / ₃	5 ² / ₃	98	65 ¹ / ₃	32 ² / ₃
18	12	6	108	72	36
19	12 ² / ₃	6 ¹ / ₃	110	73 ¹ / ₃	36 ² / ₃
21	14	7	122	81 ¹ / ₃	40 ² / ₃
23	15 ¹ / ₃	7 ² / ₃	134	89 ¹ / ₃	44 ² / ₃
24	16	8	146	97 ¹ / ₃	48 ² / ₃
27	18	9	150	100	50
28	18 ² / ₃	9 ¹ / ₃	158	105 ¹ / ₃	52 ² / ₃
30	20	10	165	110	55
33	22	11	180	120	60
36	24	12	190	126 ² / ₃	63 ¹ / ₃
38	25 ¹ / ₃	12 ² / ₃	195	130	65
39	26	13	200	133 ¹ / ₃	66 ² / ₃
<u>42</u>	<u>28</u>	<u>14</u>	210	140	70
43	28 ² / ₃	14 ¹ / ₃	220	146 ² / ₃	73 ¹ / ₃
45	30	15	225	150	75
48	32	16	230	153 ¹ / ₃	76 ² / ₃
51	34	17	240	160	80
<u>54</u>	<u>36</u>	<u>18</u>	306	204	102
57	38	19	326	217 ¹ / ₃	108 ² / ₃
58	38 ² / ₃	19 ¹ / ₃	346	230 ² / ₃	115 ¹ / ₃
60	40	20	366	244	122
<u>66</u>	<u>44</u>	<u>22</u>	386	257 ¹ / ₃	128 ² / ₃
68	45 ¹ / ₃	22 ² / ₃	406	270 ² / ₃	135 ¹ / ₃
<u>72</u>	<u>48</u>	<u>24</u>	426	284	142

V. OFFENSE SEVERITY REFERENCE TABLE

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

- | | |
|-------------|---|
| | Adulteration - 609.687, subd. 3(1) |
| X-XI | Murder 2 (intentional murder; unintentional drive-by shootings) - 609.19, subd. 1 |
| | Murder 2 of an Unborn Child - 609.2662(1) |

- | | |
|-------------|--|
| | Fleeing a Peace Officer (resulting in death) – 609.487, subd. 4(a) |
| | Murder 2 (unintentional murder) - 609.19, subd. 2 |
| | Murder 2 of an Unborn Child - 609.2662(2) |
| IX X | Murder 3 - 609.195(a) |
| | Murder 3 of an Unborn Child - 609.2663 |

- | | |
|----------------|--|
| | Assault 1 - 609.221 |
| | Assault 1 of an Unborn Child - 609.267 |
| | Controlled Substance Crime in the First Degree - 152.021 |
| | Criminal Abuse of Vulnerable Adult (death) - 609.2325, subd. 3 (a) (1) |
| | Criminal Sexual Conduct 1 (sexual penetration) - 609.342 |
| | (See II.C. <u>Presumptive Sentence</u> and II. G. <u>Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.</u>) |
| | Death of an Unborn Child in the Commission of Crime - 609.268, subd. 1 |
| | Importing Controlled Substances Across State Borders - 152.0261 |
| VIII IX | Kidnapping (w/great bodily harm) - 609.25, subd. 2(2) |
| | Manslaughter 1 - 609.20(1), (2) & (5) |
| | Manslaughter 1 of an Unborn Child - 609.2664(1) & (2) |
| | Murder 3 - 609.195(b) |
| | Prostitution (Patron) - 609.324, subd. 1(a) |
| | Solicits, Promotes, or Receives Profit Derived from Prostitution;
Individual Under 18 - 609.322, subd. 1 |
| | Tampering with Witness, Aggravated First Degree - 609.498, subd. 1b |

- | | |
|-----------------|--|
| | Aggravated Robbery 1 - 609.245, subd. 1 |
| | Arson 1 - 609.561 |
| | Burglary 1 – 609.582, 1(b) & (c) |
| | Controlled Substance Crime in the Second Degree - 152.022 |
| VII VIII | Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (a) (2) |
| | Criminal Sexual Conduct 1 (sexual contact - victim under 13) - 609.342 |
| | (See II.C. <u>Presumptive Sentence</u> and II. G. <u>Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.</u>) |
| | Criminal Sexual Conduct 2 - 609.343, 1(c), (d), (e), (f), & (h) |

Criminal Sexual Conduct 3 - 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), & (m)
Criminal Vehicular Homicide and Injury - 609.21, subd. 1 & 3
Drive-By Shooting (toward a person or occupied motor vehicle or building) -
609.66, subd. 1e (b)

VII VIII

Escape from Custody - 609.485, subd. 4(b)
Great Bodily Harm Caused by Distribution of Drugs - 609.228
Kidnapping (not in safe place or victim under 16) - 609.25, subd. 2(2)
Malicious Punishment of Child (great bodily harm) - 609.377, subd. 6
Manslaughter 1 – 609.20 (3) & (4)
Manslaughter 1 of an Unborn Child - 609.2664(3)
Manslaughter 2 – 609.205 (1) & (5)
Manslaughter 2 of an Unborn Child - 609.2665(1)

VII First Degree (Felony) Driving While Impaired – 169A.24