MINNESOTA SENTENCING GUIDELINES COMMISSION
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REPORT TO THE LEGISLATURE

January 1, 1980

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MINNESOTA SENTENCING GUIDELINES COMMISSION

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Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January 1, 1980

I. The Commission's Mandate

Minnesota Laws 1978, ch. 723, Minn. Stat. ch. 244 et sec. (1978) created the Minnesota Sentencing Guidelines Commission and directed the Commission to promulgate guidelines for the district court which establish:

1) The circumstances under which imprisonment of an offender is proper, and
2) A presumptive fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics.

In developing the guidelines, the Legislature instructed the Commission to "....take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities."

While the sentencing guidelines are advisory to the district court, the legislation provides that whenever a judge imposes or stays a sentence that deviates from the sentencing guideline applicable to the case, the judge shall make written findings of fact as to the reasons for such departure. The defendant or the state may appeal any sentence imposed or stayed to the Supreme Court.

The legislation provides that persons sentenced to prison for felonies committed on or after May 1, 1980, will serve the sentence given by the judge, reduced by good time. Thus, under the sentencing guidelines, judges, and not the Minnesota Corrections Board, will control the term of imprisonment.

Finally, the legislation directed the Commission to submit the guidelines to the Legislature on January 1, 1980, and states that those guidelines shall be effective on May 1, 1980, unless the Legislature provides otherwise.

II. Commission Implementation of the Mandate

Under current sentencing practices, the essential judicial decision is whether or not a convicted felon should be imprisoned. If the offender is imprisoned, the judge sets a maximum sentence length which may be up to the maximum provided by statute. The person is then committed to the custody of the Commissioner of Corrections. The Minnesota Corrections Board (MCB) has the authority to release imprisoned felons, and utilizes parole decision making guidelines in making releasing decisions. Thus, for those imprisoned under the existing law, the "real" judicial decision is whether or not to imprison the offender (which we refer to as the dispositional decision), and the judicial decisions regarding sentence length are "symbolic." The real power to establish durations of confinement rests with the Minnesota Corrections Board. In general, judicial decisions regarding maximum sentence length do not constrain MCB releasing discretion.

In formulating guidelines that recommend when the imprisonment of an offender is proper, the Commission has taken current judicial sentencing practices into substantial consideration--specifically, examining judicial dispositional sentencing decisions. In establishing presumptive fixed sentences for offenders for whom imprisonment is proper, the Commission has taken current Minnesota Corrections Board releasing practices into substantial consideration--specifically, examining the durations of confinement for those persons released from state correctional institutions. To do this, we conducted two major studies of sentencing and releasing practices which are described more fully below.

The legislation also directs the Commission to take into substantial consideration current correctional resources at the state and local level, including but not limited to the capacities of state and local correctional facilities. In drafting the sentencing guidelines, the Commission has interpreted this directive to mean that the guidelines should produce prison populations which do not exceed the current capacity of state correctional institutions. We feel that interpretation accurately reflects the intent of the Legislature during the four-year debate on sentencing reform, as well as legislative decisions regarding construction of new prison facilities. The Commission received a $7,500 no-match grant from the National Institute of Corrections to develop a computerized projection model to simulate the prison populations which would result from the application of various options in guideline development.

Most prior efforts in sentencing guidelines development have been highly descriptive in nature. That is, existing sentencing practices are determined by empirical research

and the results are formulated in guidelines whose objective is to replicate existing practice as closely as possible. The Commission feels there are several problems which precluded this approach in Minnesota:

1) In the past, most descriptive guidelines have been developed in single-county or metropolitan court jurisdictions. A consistent sentencing practice is more likely to exist in a single county because norms, culture, and clientele are likely to be less variable, and because judges have the opportunity to communicate easily with one another. It is less likely that a "usual" or customary sentencing practice exists in a heterogeneous statewide system.

2) Prior sentencing guidelines efforts have been developed by judicial advisory groups, operating under the administrative authority of the courts and without a mandate from the Legislature. Due to the principle of separation of powers and the tendency for judges to be politically restrained, these projects have tried to describe what judges do, rather than to consider the system-wide implications of sentencing guidelines. The Commission feels that while judicial sentencing decisions are a very important factor in establishing sentencing guidelines, they are not the only important factor. Legislatures define crimes and set parameters of punishment. Prosecutorial charging discretion, and prosecutorial and defense negotiating discretion, shape the sentencing options open to the judge. Judicial sentencing decisions have substantial impact on both state and local correctional policies. These, in turn, have financial implications for the subsequent decisions of county boards and the state Legislature. The Commission has drafted sentencing guidelines which are cognizant of and sensitive to this system-wide impact. We feel this is consistent with legislative intent, because the Legislature chose to establish a Commission representing the criminal justice system and the public, and has directed the Commission to take into substantial consideration current sentencing and releasing practices and available correctional resources.

As a result of this system-wide concern, our guidelines have a greater normative content than prior efforts. In developing such guidelines, we have been informed by, but not bound to, current practice.

III. Summary of Research

The legislation directs the Commission to develop guidelines that indicate when imprisonment is proper, and for cases when it is proper, to provide presumptive fixed sentences. In doing this, the Commission was directed to take current sentencing and releasing practices into substantial consideration. Unfortunately, there existed no adequate and usable data base which would allow the Commission to determine what current sentencing and releasing practices are. Therefore, the Commission conducted two major studies beginning in January, 1979--a dispositional study which examined judicial sentencing practices, and a durational study which examined the releasing practices of the Minnesota Corrections Board.

In the dispositional study, the Commission collected data on approximately 50% of the persons convicted of felonies in fiscal year 1978. This included all of the females convicted of felonies during that time span, and a 42% random sample of males. All counties in the state were included in the sample, and we "oversampled" in counties with large Indian populations, so that our sample would contain a sufficient number of Indian felons to allow meaningful analysis. The total sample of felons in the dispositional study was 2,339.

In the durational study, the Commission collected data on every person released from state correctional institutions in fiscal year 1978 at their first release, either on parole or at expiration of the sentence following commitment to the custody of the Commissioner of Corrections. We included those whose first release was at expiration of the sentence since the MCB's decision to deny parole was, in fact, a conscious durational decision. The durational study contained 847 cases.

For both studies, we collected the same set of information covering current offense, prior criminal history, juvenile history (for adults age 23 or less at time of the current offense), social history, criminal justice processing data, and sentencing data. For the durational study, we added variables covering duration of confinement specifically. For the dispositional study, we collected information on 143 items, and for the durational study we collected 152 items of information.

In analyzing the dispositional data, we sought to identify factors which were associated with judicial decisions to imprison or not imprison a convicted felon. In the durational study, we sought to identify factors which were associated with MCB releasing decisions regarding the duration of confinement for those committed to the custody of the Commissioner of Corrections.

The most significant factor in judicial decision making was the criminal history of the offender. The second most important factor affecting judicial sentencing decisions was the severity of the current offense. The most important single criminal history item was the number of prior felony convictions. Another important criminal history item was whether or not the offender was on probation or parole at the time the current offense was committed. For young adult felons, we found that the extent and severity of the juvenile record was a third important criminal history item in judicial decision making.

These findings were consistent with sentencing studies in other jurisdictions. However, judicial sentencing decisions in Minnesota differ from those in many other jurisdictions in an important respect. We found that social status items, such as educational attainment, employment, community stability, marital status, and drug and alcohol use, were not associated with the sentencing decision, except for employment at time of sentencing. Social status variables are highly correlated with race and income levels. Critics could argue that if they were included in the guidelines, a systematic racial and economic bias would be introduced. Since we found that social status items were not associated with the sentencing decision, we can exclude them from the guidelines without creating a substantial disruption of current sentencing practices. We found that the same two factors, seriousness of current offense and criminal history, were strongly associated with the MCB decisions concerning duration of prison terms. However, in the durational component of sentences, the severity of the offense was the primary factor and the criminal history of the offender was of secondary importance.

Although the data revealed clear patterns indicating that current offense severity and criminal history are consistently the most important factors in sentencing decisions, a significant amount of additional variation in sentencing decisions was found which did not appear to be related to relevant offense and offender characteristics. Numerous variables were examined in an attempt to explain or identify the nature of the variation. We discovered some regional differences in sentencing. A slightly lower proportion of person offenders was committed from metropolitan areas than from non-metropolitan areas. There appeared to be some racial differences, with Blacks being committed at a higher rate than Whites for serious person offenses and Whites being committed at a slightly higher rate than Blacks for property offenses. There did not, however, appear to be systematic racial bias in sentencing. We also found some differences between males and females, but the differences did not indicate the

presence of systematically more or less severe sentencing for either gender. Our inability to explain a substantial amount of sentencing variation on the basis of offender, offense, and regional characteristics confirmed the existence of disparity in sentencing which the sentencing guidelines legislation addressed.

Finding that the two factors of seriousness of current offense and prior criminal history captured most relevant aspects of past disposition led to the development of a two-dimensional grid for determining appropriate judicial dispositions. Given that the same two dimensions were also found to be the most important in determining the durational component of sentencing, the Commission was able to place the durations in the same two dimensions, thus capturing the essential elements of both judicial sentencing and parole releasing practices on a single two-dimensional grid.

IV. Content and Explanation of Guidelines

A. **Development of Offense Severity Reference Table:** For both the dispositional and durational studies, we measured offense severity by using an offense severity table developed by the Commission. For four months, the Commission worked on various aspects of the severity table construction. All commonly occurring felonies were arranged into six categories--property crimes, crimes against persons, sex offenses, drug offenses, arson offenses, and a miscellaneous category. For each offense in these six categories, staff prepared a card which described the offense, provided the statutory citation, and the statutory maximum penalty. Each Commission member was given six decks (one for each major category), which contained a total of 104 cards. Each Commission member was then asked to sort the cards within each deck in order of decreasing severity. Staff then computed an average rank for each card in the six decks. The cards were then re-ordered for each member to reflect the Commission's average rank and returned to the members at a subsequent meeting.

At this meeting, the members placed the six decks of cards in front of them and held a group discussion to determine which of the six cards, representing the most severe average rank within the respective decks, was most severe overall. That item was rated number one in terms of overall severity. The members then examined the remaining top cards in the six decks, and selected the one they felt was most severe, and this item was ranked second in terms of overall severity. This process was continued until all 104 cards had been placed on a continuum

from highest to lowest severity. During this process, members of the Commission frequently differed on which of the six cards before them should be most severe. When these differences emerged, the members articulated reasons for their preference, and sought to persuade other members to their viewpoint. This continuing articulation of reasons provided the substantive basis for the Commission consensus attained in the overall ranking. Finally, the Commission divided the overall ranking into a smaller number of severity levels, within which offenses were deemed to be generally equivalent, which resulted in the delineation of offenses in each of the ten levels of severity.

B. **The Criminal History Index:** The Commission sought to develop a criminal history index which:

a. was consistent with current sentencing and releasing decisions;
b. was based on objective and readily available records;
c. was simple to use and, therefore, less prone to error;
d. did not rely on social or economic status variables.

The analysis of current practice suggested two core variables for inclusion in the criminal history index--the number of prior felony convictions, and the "custody status" at time of conviction, that is, whether the offender was on probation or parole when the offense was committed. Another variable that was related to the dispositional decision was the juvenile record of young adult felons. Finally, the Commission chose to include the misdemeanor and gross misdemeanor record in the criminal history index. While our research did not show that a misdemeanor/gross misdemeanor record was highly associated with judicial sentencing decisions, it was included as a matter of Commission policy preference. That is, the Commission felt it ought to be considered as an important element of the criminal history of convicted felons.

In addition, the Commission had to decide how these items ought to be weighted--that is, whether some items should count more heavily than others in computing criminal history. Over a period of two months, the Commission examined several criminal history indices constructed by staff and narrowed the choice based on expressions of Commission preference and system impact.

The decision to use juvenile records was not made lightly. While there were significant arguments for inclusion, the most persuasive was that our research found the juvenile record was an important factor in sentencing young adult

felons. Juvenile record is less important in sentencing older adult offenders because they have had the opportunity to accrue an adult felony record. For the young adult offender, however, the juvenile record is the only information available to indicate the presence or absence of past offenses. However, differential availability of juvenile records, differing juvenile court rules regarding disclosure of juvenile records for adult sentencing purposes, and ambiguous statutory authority for the juvenile court to disclose the record to the district court for adult sentencing purposes created problems.

The Commission devoted portions of two meetings to a public hearing on the issue of using juvenile records. Juvenile court judges, district court judges, prosecutors, defenders, law school professors, representatives of law enforcement organizations, and corrections officials addressed the Commission on the pros and cons of using juvenile records.

The Commission chose to include a juvenile history item in the criminal history index. The Commission's intent was to identify the serious and persistent juvenile offender who, as a young adult, is convicted of a felony, and to place strict limits on the types of records considered, as well as the periods of the offender's minority and majority during which their consideration would be relevant. These limits will restrict and standardize the consideration of juvenile records in adult sentencing, compared to current practice.

C. **Sentencing Guidelines Grid:**

1. *The Dispositional Line:* The legislation requires the Commission to establish circumstances under which the imprisonment of an offender is proper, based on appropriate combinations of reasonable offense and offender characteristics. The Commission defined those characteristics as the severity of the offense and the criminal history of the offender. The next task was to determine those combinations of offense severity and criminal history characteristics for which imprisonment would be proper. This was accomplished by drawing a "dispositional line."

   In drawing the dispositional line, the Commission considered several factors, including:

   (a) current judicial sentencing practices;
   (b) various philosophies of punishment;
   (c) expressions of legislative intent;
   (d) and, to a lesser degree, system impact.

We began by examining, within each cell of a grid defined by the categories of offense severity and criminal history scores, the current rates of imprisonment. As was expected, the rates were low for low severity, low criminal history cells, and increased, generally, at higher levels of criminal history and higher levels of severity.

In terms of philosophies of punishment, the Commission considered dispositional lines which emphasized (a) just deserts, (b) incapacitation, and (c) various degrees of emphasis between the two. A just deserts dispositional line would have a very flat slope, and the offense of conviction would be the dominant factor in deciding who should be imprisoned. Our assessment of system impact indicated that a line which heavily emphasized just deserts would be incompatible with available correctional resources. An incapacitation dispositional line would have a very steep slope, emphasizing criminal history much more than offense of conviction. Between these two extremes, the Commission considered a number of options where the slope of the line varied less drastically, but gave greater emphasis to one goal or the other.

In terms of legislative intent, the Commission considered two primary factors: (a) mandatory sentencing laws, and (b) the Community Corrections Act. Existing mandatory sentencing laws cover murder in the first degree (which is excluded from the sentencing guidelines by the enabling legislation), second conviction of certain drug and sex crimes, and offenses where the offender possesses a firearm or uses some other dangerous weapon. The Commission attempted to draw the dispositional line so that most offenses wherein mandatory sentences would be involved would receive a presumptive imprisonment sentence. The Community Corrections Act establishes a presumption against imprisonment for persons convicted of offenses with a statutory maximum of five years or less--generally property crimes. The Commission attempted to draw the dispositional line in a way which substantially complies with this expression of legislative intent. However, our guidelines will recommend imprisonment of certain persons convicted of property crimes with longer criminal histories.

The dispositional line finally adopted by the Commission is based on a modified just deserts approach. The line indicates that imprisonment is presumptive for any persons convicted of offenses involving aggravated

robbery, assault in the first degree, arson in the first degree, criminal sexual conduct in the first degree, kidnapping, if the victim is not released in a safe place or suffers great bodily harm, manslaughter in the first degree, and murder in the second and third degrees. For these offenses, it was the position of the Commission that the severity of the offenses, by themselves, were sufficient to merit a presumption of imprisonment. This leaves open the possibility that there may be compelling mitigating factors in some cases which would make imprisonment inappropriate. In such cases, the judge may depart from the guidelines and provide written reasons to support the departure.

The dispositional line also provides a presumption against state imprisonment for all severity level one offenses. The most frequent offense in severity level one is unauthorized use of a motor vehicle (UUMV). The Commission felt that UUMV was intended to cover "joyriding" situations, as distinguished from theft, where the intent of the perpetrator was to deprive the owner permanently of possession of the vehicle. Given that, the Commission felt that the potential for incarceration in a local jail or workhouse for up to twelve months was commensurate with the severity of the offense. In addition, if an individual case involved substantial and compelling aggravating factors, the judge could depart from the guidelines and imprison the offender by giving written reasons.

Between severity levels II and VI, the dispositional line varies with both criminal history and offense severity. For more severe offenses, the dispositional line is drawn at lower criminal history levels. For less severe offenses, the dispositional line is drawn at higher criminal history levels.

Consideration of system impact (i.e., availability of prison beds) played a rather passive role in determining the position of the dispositional line. That is, system impact considerations eliminated some configurations of the line from further consideration. However, the Commission was left with a number of feasible options, and the final choice represents a principled rather than a pragmatic view of who should and who should not be imprisoned.

2. *Presumptive Fixed Sentences:* The last step in fulfilling the legislative mandate was development of presumptive fixed sentences for those for whom imprisonment was deemed proper. In establishing the durational portion of the guidelines, the Commission took several factors into consideration, including:

(a) current practice and policy of the Minnesota Corrections Board;
(b) different philosophies of punishment; and,
(c) system impact.

For each cell in the Sentencing Guidelines Grid, the Commission examined MCB practice with respect to those given their first release (either via parole or expiration of sentence) during fiscal year 1978. In addition, the Commission considered the statements of MCB policy with respect to durations of confinement contained in the MCB parole decision making guidelines. The Commission also considered several durational models suggested by different philosophies of punishment. For example, durations based on a just deserts philosophy would increase more rapidly with offense severity than with prior criminal record, whereas incapacitation-oriented durations would increase much more rapidly with prior criminal record than with offense severity. Finally, the Commission considered the impact of various durational options on correctional resources. While other aspects of guideline development were informed by considerations of system impact, those considerations were more significant in the formulation of the durational component.

Minnesota Statutes, ch. 244.04, provides for good time to be earned at the rate of one day for every two days of good behavior. See Minn. Laws 1978, ch. 723, art. I, sec. 20. Thus, a person given a six-year presumptive fixed sentence would serve a four-year term of imprisonment if they earned all possible good time. In establishing the durational guidelines, the Commission sought to equate current MCB durations of confinement with terms of imprisonment rather than fixed presumptive sentence length in order to prevent substantial reductions in the average time imprisoned by offenders at the various levels of offense severity. For example, if we found that offenders in a particular cell of the Sentencing Guidelines Grid had been imprisoned for an average of four-years in the past, we established a presumptive fixed sentence of six years for that cell so that, with good time reductions, they would continue to serve a four year term of imprisonment in the future. While it was impossible to achieve this objective in every cell of the Sentencing Guidelines Grid, the objective guided the Commission in the overall establishment of the fixed presumptive sentences.

Below and to the right of the dispositional line, the Sentencing Guidelines Grid provides a fixed presumptive sentence as well as a range of time. The legislation permits, but does not require, the Commission to establish a range of permissible deviation of up to plus or minus fifteen percent about the presumptive fixed sentence. The Commission chose to include ranges of permissible deviation in the guidelines which were more narrow than the maximum range allowed in the legislation. The Commission felt that broad ranges would increase the disparate treatment of similar cases and, in a sense, would allow disparity to continue in practice while defining it away in theory. The Commission felt some flexibility was necessary to allow sentence lengths to reflect legitimate, but not substantial and compelling, differences among cases, and to prevent the guidelines from becoming rigid and mechanistic. The ranges provided are plus or minus five to eight percent about the fixed presumptive sentences. To simplify guideline application, the Commission chose to state a sentence range in whole months in the Sentencing Guidelines Grid, rather than to have the sentencing judge compute a percentage variation for each case. Any sentence that is within the range shown in the appropriate cell of the Sentencing Guidelines Grid is not a departure from the guidelines, and no written reasons are required.

Above and to the left of the dispositional line, a single figure is given. Where the sentence is stayed by means of a stay of execution, the judge would pronounce a sentence of imprisonment for the duration shown in the appropriate cells, but stay its execution, attaching such conditions to the stay as the judge may deem appropriate. Judges may establish a duration of a stayed felony sentence that exceeds the presumptive prison sentence in the appropriate guideline cell, and that could be as long as the statutory maximum sentence. For example, even though our guidelines might set a twelve-month presumptive prison sentence, the judge could place the offender on probation for up to the statutory maximum of three years upon conviction for unauthorized use of a motor vehicle. If the stay were later revoked, the twelve-month presumptive prison sentence could then be executed.

If the judge decides to grant a stayed sentence by means of a stay of imposition, no prison sentence is pronounced, and the imposition of sentence is stayed to some future date. The judge then establishes such conditions of

the stayed sentence as the judge deems appropriate. We provide presumptive prison sentences for stayed sentences to cover situations wherein the stay is later revoked and the sentence imposed and to assure that those who are imprisoned following revocation of a stayed sentence do not serve longer prison sentences than those with longer criminal histories (at any given level of offense severity) for whom the guidelines recommended imprisonment.

D. **Related Policies:** In addition to providing fixed presumptive sentences for those for whom imprisonment is proper, the Commission deemed it necessary to establish policies on several related issues which affect durations of prison sentence. Among these are (a) granting jail credit, (b) conditions for the use of consecutive sentences, and a method for computing them under sentencing guidelines, (c) revocation of stayed sentences, (d) a procedure for sentencing certified juveniles, (e) a method for establishing sentence length when imprisonment is mandatory, and (f) a method for computing sentence length when the conviction is for an attempted offense, or a conspiracy to commit an offense. These policies are contained in sections II, D-H and III, A-E of the guidelines.

V. Impact of the Sentencing Guidelines

The primary objective of the sentencing guidelines is to reduce sentencing disparity by providing recommendations as to when imprisonment is an appropriate sanction, and by providing fixed presumptive sentences for those offenders who are imprisoned. The legislation directs the Commission to accomplish this in a manner consistent with available correctional resources. Accordingly, the Commission has devoted considerable effort to projecting the impact of the sentencing guidelines on prison populations, not only in terms of population levels and types, but in terms of the impact of the guidelines on females, males, racial groups, and age groups within the prison population.

A. **Level of Prison Population:** One outcome of sentencing reform in other jurisdictions has been massive increases in prison populations. Most of the population increases have been attributed to changes in sentencing behavior and very little appears to be attributable to changes in crime rates. The sentencing guidelines were developed so that the state prison capacity of 2,072 beds should not be

exceeded as a result of changes in sentencing. Obviously, there are numerous factors which affect prison populations in addition to the recommended guideline sentences, and as with any population projection, caveats and explanations are in order. Estimates for judicial and correctional factors which can be expected to have substantial impacts on prison population were built into the population projection at either their current level of operation or, where no experience exists, by informed speculation. Major factors built into the population projection include:

1. departures from guideline dispositional recommendations (10% overall);
2. probation revocations for technical violations (current level);
3. MCB parole or supervised release revocations for technical violations (current level); and
4. work release from institutions (current level).

Components that are not included in the population projection estimates include loss of earned good time for disciplinary infractions, credit for jail time, and departures for the duration aspect of the guidelines. It is anticipated that these factors will balance out in terms of their impact on population. The population projection includes a slight adjustment for changes in the demographics of the state, specifically changes in the population at risk. There is no adjustment, however, for changes in the crime rate or changes in other areas of criminal justice processing such as charge bargaining. Any major change in law enforcement, MCB practices, prosecution charging, or the crime rate from current practice would render the population projections inaccurate.

The guidelines were developed so that the average projected population would be 5% below capacity. A 5% margin was deemed necessary for three reasons. First, correctional institutions are generally not designed to consistently operate at 100% capacity. Operating with full capacity creates significant problems both for managing institutions and maintaining order in institutions. Secondly, a 5% margin provides room for "peak" periods of populations without exceeding capacity. And third, our inability to build a number of important factors into the population projection with a high degree of accuracy until some experience is gained necessitates building in a margin for error. Population projections indicate that under the guidelines the average prison population should be between 1,908 and 1,983. It is anticipated that the highest prison population over a five year period will not exceed 2,020, given a prison population of 2,020 (its current approximate level) at the point of guideline implementation.

B. **Types of Offenses:** The dispositional line adopted by the Commission should result in more person offenders and fewer property offenders being committed to the Commissioner of Corrections than in the past. The sentencing guidelines recommend, for example, that all offenders convicted at severity level VII or higher (generally serious person offenses) be committed to the Commissioner of Corrections. In the past, a majority of those person offenders with very limited or no criminal history received stayed sentences.

On the other hand, the guidelines recommend a stayed sentence for most low severity property offenders with sanctions other than state institutionalization to be applied. In the past, a majority of these low severity offenders with long criminal histories was committed to the Commissioner of Corrections.

The expected change in commitment pattern should have a substantial impact on the types of offenders in state institutions. It is anticipated that there will be more murderers, sex offenders, robbers, assaulters, and other serious person offenders sent to state institutions than in the past. Since those types of offenders have typically served, and will continue to serve, longer periods of incarceration than most property offenders, they tend to accumulate in the institutions and make up a higher proportion of the prison population than the commitment rates alone would indicate. Over a five year period the proportion of person offenders in state institutions should increase from about 58% to 74%. It is expected that the proportion of property offenders would decrease from about 39% to 23% of the prison population.

C. **Male/Female Commitments:** Although the types of male offenders committed to the Commissioner should change significantly under the guidelines with more person and fewer property offenders committed, the commitment rate for males will change very little. In the past, approximately 21.9% of male felons were committed to the Commissioner and, under the guidelines, it is anticipated that the commitment rate for males will be approximately 20.7%, or a decrease of about 1%. Overall, the males committed will be serving slightly longer terms of incarceration than in the past because more of them will be person offenders.

The female commitment rate under guidelines should remain at approximately the same level as past practice (9.2%). Unlike the males, there will be little change

in the type of female offenders being committed. Almost all of the female serious person offenders, for whom the guidelines recommend commitment, received commitment sentences in the past; that is less true for males. Also, the commitment rate for female property offenders has been relatively low in the past. Therefore, there should be little change in the numbers and types of females being committed under the guidelines. Neither should there be significant changes in the nature or size of the female prison population because the durations embodied in sentencing guidelines are similar to current practice.

D. **Racial Groups:** It is expected that past commitment rates will remain substantially unchanged for each racial group after implementation of the guidelines. For Whites, the commitment rate is expected to be approximately 18% whereas in the past the commitment rate was approximately 19%. The types of White offenders committed, however, should undergo a significant change. The guidelines should result in more commitments for White serious person offenders than in the past. There should also be fewer commitments for low severity White property offenders. The result will be slightly fewer Whites being committed who serve slightly longer sentences. Because of the longer sentences being served by the Whites committed, the proportion of Whites residing in state institutions should not change from current levels (75%).

The past commitment pattern for Blacks, including both commitment rate and offender type committed, should remain essentially unchanged under the sentencing guidelines. A somewhat higher proportion of Black serious person offenders should be committed under the guidelines than in the past. However, the commitment rate for Blacks convicted of serious person offenses has been relatively high in the past, compared to Whites convicted of serious person offenses. The guidelines should reduce the difference between Black and White commitment rates for serious person offenses, particularly in the short criminal history categories. In fiscal year 1978, 67% of the Blacks in severity categories VII through X and criminal history categories 0 through 2 were committed to the Commissioner of Corrections, compared to 52% of the Whites. Similarly, the guidelines will reduce the racial difference in commitment rates below the dispositional line. In fiscal year 1978, 73% of Blacks below the line were committed, compared to 63% of the Whites. In general, the guidelines will increase the rate of commitments of Whites below the line more than for Blacks, thereby reducing the difference in commitment rates observed in the past. The

proportion of Blacks in state institutional populations should change very little from the current level of 16% since the duration of confinement of Blacks committed will be similar to current practice.

There should be slightly fewer Indian property offenders and a few more Indian person offenders committed to the Commissioner, with the number of Indians committed remaining fairly constant. The durations for Indians will increase very slightly because of the increase in person offenses. The net increase in terms of the Indian prison population should be slight.

The impact of the guidelines on other racial groups cannot be determined with any degree of certainty because of the small numbers involved. However, it would appear that for all racial groups except Blacks, there will be significantly fewer property and more person offenders being committed.

E. **Age:** It is expected that the guidelines will have a differential impact on younger and older groups of offenders. The commitment rate for younger offenders (18-23) should decrease by 1.7%. It is expected that the types as well as the numbers of young people committed will change. More low history, high severity person offenders in the 18-23 age category should be committed and fewer low severity property offenders should be committed. The terms of incarceration served by young offenders should be comparable to current practice and, therefore, there should be a slight decrease over time in the proportion of young people (18-23) in state institutions (42% compared to the current 48%). The converse is true of older offenders. Older offenders should be committed more frequently under the guidelines than under past practice, with serious person offenders committed in greater numbers and fewer low severity property offenders committed. The durations for the older offenders committed under the guidelines will be longer than for those who were previously committed and, therefore, the state institutional population should become somewhat older than the current population. At present, 26% of the prison population are over age 30 when sentenced; that percentage should increase to 30% of the prison population after the guidelines are implemented.

F. **Judicial Districts:** The sentencing guidelines should effect the commitment of more person and fewer property offenders in every judicial district, but the extent of change that should occur varies across judicial districts. It is expected that significant changes will occur in District 2 (Ramsey) and to a lesser extent in

District 4 (Hennepin) and District 10. In the past, a significant number of serious person offenders has not been committed from these districts and a substantial number of low severity property offenders has been committed. The number of commitments in each of these districts should remain fairly constant under the sentencing guidelines. However, the additional serious person offenders who should be committed will serve somewhat longer terms than the property offenders who were previously committed. As a result of the longer terms, offenders from metropolitan areas (Districts 2, 4, and 10) will tend to accumulate in state institutions and should comprise a slightly larger proportion of the state institutional population than under current practice.

Expected changes in the remaining judicial districts, which are primarily non-metropolitan areas, differ from expected changes in the metropolitan area. Most serious person offenders have traditionally been committed in non-metropolitan areas. While there will be a slight increase in the commitment of serious person offenders, they should more than be offset by reduced commitments of property offenders. The total numbers of commitments in non-metropolitan areas should decline somewhat, especially in District 3 and District 8. Both the numbers and proportions of offenders from non-metropolitan districts who reside in state correctional institutions should decline slightly.

G. **Terms of Incarceration:** As has been noted above, the state institution population will probably be more metropolitan in origin, slightly older, and will be comprised of more person offenders. A major consequence of sentencing reform in other jurisdictions has been a build-up in the institutions of offenders serving long terms. This situation has far reaching implications for institutional management and programming. The sentencing guidelines' emphasis on incarcerating the more serious person offenders is similar in philosophy to that underlying sentencing reform in other jurisdictions where this outcome has occurred. It would appear that there will be an increase in the proportion of offenders in state institutions serving terms of incarceration longer than five years (from 18% to 26%) and a decrease in the proportion of offenders serving terms of three to five years (from 40% to 30%). The proportion of offenders serving very short terms of incarceration (less than 12 months) should remain at the current level of approximately 13%. The proportion of offenders serving terms of incarceration between one and two years should also remain at about the current level (28%). While it appears that the guidelines will have an effect on the distribution of durations in the prison population, the impact in Minnesota should be gradual and manageable.

H. **Additional Consequences:** There undoubtedly will be other consequences resulting from the sentencing guidelines which are beyond our capacity to make systematic projections in advance of guideline implementation. Any major change in a system as complex as sentencing and corrections will have a "ripple" effect on many parts of the system, and some functions within the system will have to alter to accommodate the change. Through our public meetings, areas of potential change have been identified. Among them are:

1. what changes, if any, will occur in the operation of the sentencing hearing?
2. what will be the impact of the appellate review provision on Supreme Court workload?
3. what changes, if any, will occur in plea negotiation practices?
4. what changes, if any, will occur in the use of local jails, workhouses, and other community correctional programs and resources?
5. will caseloads of parole officers change?
6. what effect, if any, will the sentencing guidelines have on the Community Corrections Act?

The Commission will be examining some of these questions as part of our monitoring and evaluation responsibilities. For those issues which are not part of the Commission's responsibilities, as defined in the enabling legislation, we will share the questions raised with appropriate agencies, and will provide them with any information we may have on the subject to assist them in their decision making if so requested.

VI. Implementation of the Guidelines

A. **Training Criminal Justice Personnel:** The sentencing guidelines will go into effect on May 1, 1980, if the Legislature takes no action to the contrary during the 1980 session. Between January and May, 1980, the Commission will be preparing for the implementation of the guidelines in several ways. The Commission will cooperate with existing criminal justice agencies to design and deliver training programs to over 3,000 judges, prosecutors, public and private defense counsel, and probation officers whose functions will be affected by the sentencing guidelines. We will utilize the expertise and resources of such agencies as

Continuing Legal Education for State Court Personnel, the County Attorneys Council, the State Public Defender, and the Minnesota Department of Corrections to design and deliver these programs. Training resources of these agencies will defray the costs of the training (travel and subsistence for trainees, facility rental, if necessary, etc.) and the Commission staff will provide the training. Where possible, resources of these agencies will be used to defray costs of training materials. Where that is not possible, Commission funds will be used. For court personnel, the training program will be accredited for continuing legal education (CLE) credits.

We cannot begin to deliver the training until after the legislative session. It will be impossible to train all criminal justice personnel before the May 1, 1980, effective date. However, the law takes effect for persons convicted of felonies committed on or after May 1, and given the lag between offense commission, trial, conviction, and sentencing, we do not expect many persons to be sentenced under the guidelines until July and August, by which time the training will have been delivered.

B. **Monitoring Guideline Application:** The legislation directs the Commission to monitor the application of the guidelines and to meet as required to modify and improve them. In early 1980, the Commission will design forms for the application of the guidelines, and establish a reporting procedure so that certain limited data on every felony sentence is forwarded to the Commission. The data will be analyzed to determine rates of departure from the guidelines, reasons for departure, and directions and amounts of departures. If departures are concentrated in specific cells of the guidelines, it may indicate that those cells contain inappropriate sentences, and the Commission can examine those cells for possible modifications. If departures appear to be geographic in nature, it may indicate a need for additional training. Monitoring will allow us to detect errors in the application of guidelines, which will provide important information for in-service training programs or for clarification of any ambiguous portions of the guidelines. Finally, monitoring will provide data necessary to assess whether projected prison populations under the guidelines will remain consistent with available correctional resources.

C. **Evaluation of Effectiveness:** The legislation directs the Commission to evaluate the effectiveness of the sentencing guidelines in reducing disparity, and to study the effect of the guidelines on the operation of the criminal justice system, with particular reference to its impact, if any, on plea negotiation. Between January and mid-1980, we will design and begin to implement studies which will examine sentencing disparities before and after implementation of sentencing guidelines. Our fiscal year 1978 data base, on which the guidelines were developed, will provide the pre-guidelines data with respect to sentencing disparity. The monitoring data will provide much of the data needed for the post-guidelines sentencing disparity study, although some additional data will have to be collected. Likewise, the fiscal year 1978 data base contains some data for a pre-guidelines study of plea negotiations, although that will have to be supplemented by additional data collection. A separate study will be conducted of post-guidelines plea negotiation, probably beginning in late 1980. We will also be studying the effect of the guidelines on other criminal justice resources, with particular concern for number of trials, time involved in sentencing hearings, impact of appeals on the Supreme Court, and impact, if any, on state and local correctional resources.

D. **Legislative Recommendations:** The Commission will use the results of the monitoring and evaluation to formulate reports and recommendations to the Legislature regarding improvements in criminal procedure, the criminal code, and other matters related to sentencing. Given the time required to collect and analyze data, and the time required for the criminal justice system to adjust to changes in sentencing procedures, we expect formal reports to be available beginning with the 1982 legislative session, although some preliminary and tentative analyses may be available sooner.

E. **Ongoing Research, and Other Commission Responsibilities:** In addition, as directed by the legislation, the Commission will continue to serve as an information clearinghouse on sentencing practices and will conduct other research related to sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea negotiations, and other matters related to the improvement of criminal justice. The substance of such research will be defined by the Commission in cooperation with the Legislature. Finally, after the implementation of sentencing guidelines, the Commission will review the powers and duties of the Minnesota Corrections Board and make recommendations to the Legislature on the appropriate role, if any, of the Board under the guidelines.

The legislation authorizes, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop such guidelines at the present, although it is the Commission's intention to do so in the future. The Commission felt that they did not have sufficient time before the January 1, 1980, deadline to do a satisfactory job of developing guidelines for conditions of stayed sentences. Because approximately eighty percent of the convicted felons in Minnesota receive stayed sentences, guidelines for conditions of stayed sentences, developed without adequate consideration to policy and resource implications, could create unintended disruptions in current practices and cause serious resource problems.

VII. Legislation Recommended by the Commission

The Commission has identified three areas where they feel legislative changes are required for the guidelines to be implemented fairly and effectively. Those areas are: (a) provision of certain juvenile history information for adult sentencing purposes upon request by the district court; (b) development of minimum standards for the content of presentence investigations; and (c) provision of adequate data to the Commission for monitoring purposes.

A. **Juvenile History Information:** Under current sentencing practices, juvenile history is very important information for judges when they are sentencing young adult felons. For older adult offenders who have had the opportunity to accrue an adult criminal record, the juvenile history is not considered as an important item. Our data shows that for young adult offenders--age 23 or less at time of the current offense--juvenile history information is included where presentence investigations are performed in more than 50% of the cases in every judicial district and, in some districts, it is provided in as many as 85% of the cases.

The variability in the provision of juvenile history information results from differences in (a) juvenile court practice and (b) rules of juvenile court procedure. Some juvenile judges routinely make the official juvenile record available to the sentencing judge upon request. Some juvenile judges routinely refuse to release the juvenile record, while some make it available at the discretion of the juvenile judge. Thus, variability in juvenile court practice contributes to inequity in the availability of juvenile court records.

In addition, there are three sets of rules of juvenile court procedure in Minnesota. Eighty-five counties have adopted uniform rules of juvenile court procedure, while Hennepin and Ramsey counties each operate under their own rules. These three sets of rules vary with respect to disclosure of juvenile court records, and also contribute to the variability of juvenile record availability for adult sentencing purposes.

Some juvenile court judges feel that existing statutes prohibit disclosure of juvenile court records to the adult sentencing judge, while some view existing statutes as ambiguous, and others view them as authorizing such disclosure. Thus, differences in statutory interpretation contribute to variability in the availability of the juvenile court records.

Under current practice, there are neither uniform nor consistent standards for the reliability of the juvenile history information in presentence investigations. In some cases, official juvenile court records are used. In others, the information is obtained from statements of the offender and its accuracy may or may not be verified by consulting official records. In some cases, the source appears to be the recollections of local criminal justice officials, again, which may or may not be verified by consulting official records.

The Commission held two public hearings on the inclusion of a juvenile history item in the criminal history index. A number of individuals presented their views on both sides of the question. The Commission decided to include juvenile history for the following reasons:

1. to exclude it would result in a substantial departure from current sentencing practices for young adult offenders;
2. to exclude it would result in young adults who had an extensive record of serious juvenile offenses, and are now convicted of their first felony, being erroneously categorized as first-time offenders;
3. if the Commission excluded it, we could not prevent the current inequitable and unreliable flow of juvenile history information from continuing, and from being considered in arriving at the sentence;
4. the Commission felt that under limited and tightly controlled conditions to assure equity and reliability, certain juvenile history information was highly relevant to sentencing young adult offenders.

The Commission has defined the juvenile history item so it will identify only those whose juvenile record included repetitive felony-type adjudications, which occurred during the last two years of their minority, and which would be considered only during the first three years of their majority. The Commission believes that this will constitute a more limited and relevant use of the juvenile record than under current practice and which, if based on official records, will be much more equitable than current practice.

The legislation is designed to clarify the legality of using official juvenile court records for adult sentencing purposes. It eliminates any ambiguity in current statute, and would supersede any conflicting provisions regarding disclosure in the three sets of rules of juvenile court procedure. In addition, the suggested legislation directs the juvenile court to disclose the information upon request of the sentencing court. It was the opinion of the Commission that if statutory ambiguity was removed, but disclosure was left to the discretion of the juvenile court, official records would continue to be available in a variable fashion, and inequity would continue. Our suggested legislation would not restrict juvenile court control over the disclosure of the juvenile record for any other purpose, and juvenile court judges would continue to establish reasonable standards regarding its provision to the sentencing court to ensure the integrity of the juvenile court records.

B. **Minimum Content of Presentence Investigation Reports:** To apply sentencing guidelines fairly and uniformly, information on the items contained in the criminal history index must be provided for every person convicted of a felony which occurred on or after May 1, 1980. Currently, criminal history information is collected and reported in presentence investigations, although it is not always collected and reported in the format required by the sentencing guidelines. No agency currently has authority to establish standards for the content and reliability of presentence investigations on a statewide basis. The suggested legislation would grant the Commission authority to establish minimum standards for presentence investigations. These minimum standards would relate only to the information needed to determine the sentencing guidelines' recommended sentence. Since most presentence investigations now contain such information, the provision of minimum standards by the Commission would not add to the information now being collected, but merely assure it is available in a uniform and reliable format.

C. **Provision of Data for Monitoring the Guidelines:** Current statutes state that the Commission may "request" information from agencies to the extent authorized by law. The law also requires the Commission to monitor the application of the sentencing guidelines. To monitor the guidelines properly, the Commission must collect a limited amount of information on every felony case sentenced under the guidelines. If that information is provided by the sentencing court on a voluntary basis, reporting may be spotty, uneven, and unreliable and, hence, insufficient to conduct satisfactory monitoring. If that data would have to be collected in the field by the Commission, we would need a substantial increase in staff and budget. Therefore, we are suggesting legislation which would require the sentencing court to provide to the Commission such information as the Commission deems necessary for monitoring the guidelines. We are attempting to integrate the information flow process so that reporting would pose minimal additional burdens on the sentencing court. For instance, we will design a sentencing guidelines worksheet which will be completed by the probation officer, copies of which would be given to the prosecution and defense prior to the sentencing hearing, and copies retained by the court and completed at sentencing. At the completion of sentencing, a copy of that worksheet would then be sent to the Commission.

MINNESOTA SENTENCING GUIDELINES

I. Statement of Purpose and Principles

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.

The sentencing guidelines embody the following principles:

1. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.

2. While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons.

3. Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

4. While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

II. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grid. The grid represents the two dimensions most important in current sentencing and releasing decisions--offense severity and criminal history.

A. **Offense Severity:** The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. Felony offenses are arrayed into ten levels of severity, ranging from low (Severity Level I) to high (Severity Level X). 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."

B. **Criminal History:** A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grid. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.

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

1. Subject to the conditions listed below, the offender is assigned one point for every felony conviction for which a sentence was stayed or imposed, and that occurred before the current sentencing.
    a. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stat. § 609.585, the offender is assigned one point;
    b. An offender shall not be assigned more than two points for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;
    c. When a prior felony conviction resulted in a misdemeanor or gross misdemeanor sentence, that conviction shall be counted as a misdemeanor or gross misdemeanor conviction for purposes of

computing the criminal history score, and shall be governed by item 3 below;

d. When a prior felony conviction results in a stay of imposition, and when that stay of imposition was successfully served, it shall be counted as a felony conviction for purposes of computing the criminal history score for five years from the date of discharge, and thereafter shall be counted as a misdemeanor under the provisions of item 3 below;

e. Prior felony convictions will not be used in computing the criminal history score after a period of ten years has elapsed since the date of discharge from or expiration of the sentence, provided that during the period the individual had not been convicted of a felony, gross misdemeanor, or misdemeanor.

2. The offender is assigned one point if he or she was on probation or parole or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor, or released pending sentencing at the time the felony was committed for which he or she is being sentenced.

The offender will not be assigned a point under this item when:

a. the person was committed for treatment or examination pursuant to Minn. R. Crim. P. Section 20; or

b. the person was on juvenile probation or parole status at the time the felony was committed for which he or she is being sentenced.

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and two units for each gross misdemeanor conviction (excluding traffic offenses) for which a sentence was stayed or imposed before the current sentencing. 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.

a. Only convictions of statutory misdemeanors or ordinance misdemeanors that conform substantially to a statutory misdemeanor shall be used to compute units.

b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, and the most serious conviction is for a gross misdemeanor, no offender shall be assigned more than two units.

c. Prior misdemeanor and gross misdemeanor convictions will not be used in computing the criminal history score after a period of five years has elapsed since the date of discharge from or expiration of the sentence, provided that during the period the individual had not been convicted of a felony, gross misdemeanor, or misdemeanor.

4. The offender is assigned one point for every two juvenile adjudications for offenses that would have been felonies if committed by an adult, provided that:
   a. The juvenile adjudications were pursuant to offenses occurring after the offender's sixteenth birthday;
   b. The offender had not attained the age of twenty-one at the time the felony was committed for which he or she is being currently sentenced; and
   c. No offender may receive more than one point for prior juvenile adjudications.

The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law.

The criminal history score is the sum of points accrued under items one through four above.

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 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 below and to the right of the line, the sentence should be executed. For cases contained in cells above and to the left of the line, the sentence should be stayed.

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells below 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 E of these guidelines.

D. **Departures from the Guidelines:** The sentences provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case. The judge shall utilize the presumptive sentence provided in the Sentencing Guidelines Grid unless the individual case involves substantial and compelling circumstances. When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.

In making decisions about departing from the guidelines, judges should take into substantial consideration the statement of purpose and principles in section I above.

1. Factors that should not be used as reasons for departure: The following factors should not be used as reasons for departing from the presumptive sentences provided in the Sentencing Guidelines Grid:
    a. Race
    b. Sex
    c. Employment factors, including:
        (1) occupation or impact of sentence on profession or occupation;
        (2) employment history;
        (3) employment at time of offense;
        (4) employment at time of sentencing.
    d. Social factors, including:
        (1) educational attainment;
        (2) living arrangements at time of offense or sentencing;

(3) length of residence;

(4) marital status.

e. The exercise of constitutional rights by the defendant during the adjudication process.

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

a. *Mitigating Factors:*

(1) The victim was an aggressor in the incident.

(2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.

(3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.

(4) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

b. *Aggravating Factors:*

(1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.

(2) The victim was treated with particular cruelty for which the individual offender should be held responsible.

(3) The current conviction is for an offense in which the victim was injured and there is a prior felony conviction for an offense in which the victim was injured.

(4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or

property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

(a) the offense involved multiple victims or multiple incidents per victim;

(b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;

(c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or

(e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

E. **Mandatory Sentences:** When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day, the presumptive duration of the prison sentence should be 18 months or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

When an offender has been convicted of an offense with a mandatory minimum sentence of three years, the presumptive duration of the prison sentence should be 54 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. First degree murder, which has a mandatory life imprisonment sentence, is excluded from offenses covered by the sentencing guidelines.

Because good time reductions do not apply to mandatory minimum sentences under Minnesota law, the intent of this provision is to provide all incarcerated inmates with equal incentive for good behavior, thereby alleviating potential institutional management problems.

F. **Concurrent/Consecutive Sentences:** When an offender is convicted of multiple current offenses, or where there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.

Consecutive sentences may be given only in the following cases:

1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or
2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or
3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485.

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations.

For persons who, while on probation, parole, or supervised release, commit a new offense for which a consecutive sentence is imposed, service of the sentence for the current conviction shall commence upon the completion of any incarceration arising out of the prior sentence.

G. **Convictions for Attempts or Conspiracies:** For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by one-half, but such sentence shall not be less than one year and one day.

H. **Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence:** If the presumptive sentence duration given in the appropriate cell of the Sentencing Guidelines Grid exceeds the statutory maximum sentence for the offense of conviction, the statutory maximum sentence shall be the presumptive sentence.

III. Related Policies

A. **Establishing Conditions of Stayed Sentences:**

1. *Method of Granting Stayed Sentences:* When the appropriate cell of the Sentencing Guidelines Grid provides a stayed sentence, and when the judge chooses to grant that stay by means of a stay of execution, the duration of prison sentence shown in the appropriate cell is pronounced, but its execution is stayed. When the judge chooses to grant the stay by means of a stay of imposition, the duration of the prison sentence in the appropriate cell is not pronounced and the imposition of the sentence is stayed. The judge would then establish conditions which are deemed appropriate for the stayed sentence, including establishing a length of probation, which may exceed the duration of the presumptive prison sentence.

   The Commission recommends that stays of imposition be used as the means of granting a stayed sentence for felons convicted of lower severity offenses with low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

2. *Conditions of Stayed Sentences:* The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sentences, although it is the Commission's intention to do so in the future. The Commission recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including, but not limited to, retribution, rehabilitation, public protection, restitution, deterrence, and public condemnation of criminal conduct. The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The development of principled standards for establishing conditions of stayed sentences requires that judges first consider the objectives to be served by a stayed sentence and, second, consider the resources available to achieve those objectives. When retribution is an important objective of a stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender, and judges should consider the availability and adequacy of local jail or correctional facilities in establishing such sentences. The Commission urges judges to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. When rehabilitation is an important objective of a stayed sentence, judges are urged to make full use of local programs and resources available to accomplish the rehabilitative objectives. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds. The Commission urges judges to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for persons with short criminal histories who are convicted of property crimes, although the use of such conditions in other cases may be appropriate. Supervised probation should continue as a primary condition of stayed sentences. To the extent that fines are used, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

B. **Revocation of Stayed Sentences:** The decision to imprison an offender following a revocation of a stayed sentence should not be undertaken lightly and, in particular, should not be a reflexive reaction to technical violations of the conditions of the stay. Great restraint should be exercised in imprisoning those violating conditions of a stayed sentence who were convicted originally of low severity offenses or who have short prior criminal histories. Rather the Commission urges the use of more restrictive and onerous conditions of a stayed sentence, such as periods of local confinement. Less judicial forbearance is urged for persons violating conditions of a stayed sentence who were convicted of a more severe offense or who had a longer criminal history. Even in these cases, however, imprisonment upon a technical violation of the conditions of a stayed sentence should not be reflexive.

The Commission would view commitment to the Commissioner of Corrections following revocation of a stayed sentence to be justified when:

1. The offender has been convicted of a new felony for which the guidelines would recommend imprisonment; or
2. Despite prior use of expanded and more onerous conditions of a stayed sentence, the offender persists in violating conditions of the stay.

C. **Jail Credit:** Pursuant to Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P. 27.03, subd. 4(b), when a convicted felon is committed to the custody of the Commissioner of Corrections, the court shall assure that the record accurately reflects all time spent in custody between arrest and sentencing, including examinations under Minn. R. Crim. P. § 20, for the offense or behavioral incident for which the person is sentenced, which time shall be deducted by the Commissioner of Corrections from the sentence imposed. Time spent in confinement as a condition of a stayed sentence where the stay is later revoked and the offender committed to the custody of the Commissioner of Corrections shall not be included in the above record, however, and shall not be deducted from the sentence imposed. See Vezina v. State of Minnesota et al. No. 49357 (Minn. S. Ct. Aug. 24, 1979), and State ex rel. Ahern v. Young, 273 Minn. 247, 141 N.W.2d 20.

D. **Certified Juveniles:** When a juvenile has been referred to the district court for trial as an adult pursuant to Minn. Stat. § 260.125, the sentences provided in the sentencing guidelines apply with the same presumptive force as for offenders age 18 or over at the time of the commission of offenses.

E. **Presentence Mental and Physical Examinations for Sex Offenders:** Under the authority of Minn. R. Crim. P. 27.02, when an offender has been convicted under Minn. Stat. § 609.342, 609.343, 609.344, 609.345, or 609.365, or is convicted under section 609.17 of an attempt to commit an act proscribed by Minn. Stat. § 609.342 or 609.344, the Commission recommends that any state, local, or private agency that the court may deem adequate be ordered to make a physical and mental examination of the offender, as a supplement to the presentence investigation required by Minn. Stat. § 609.115.

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.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle *Possession of Marijuana*	I	12*	12*	12*	15	18	21	24
Theft Related Crimes ($150-$2500) *Sale of Marijuana*	II	12*	12*	14	17	20	23	27 *25-29*
Theft Crimes ($150-$2500)	III	12*	13	16	19	22 *21-23*	27 *25-29*	32 *30-34*
Burglary - Felony Intent *Receiving Stolen Goods ($150-$2500)*	IV	12*	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Simple Robbery	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Assault, 2nd Degree	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Assault, 1st Degree *Criminal Sexual Conduct, 1st Degree*	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree	IX	97 *94-100*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *195-215*	230 *218-242*
Murder, 2nd Degree	X	116 *111-121*	140 *133-147*	162 *153-171*	203 *192-214*	243 *231-255*	284 *270-298*	324 *309-339*

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

V. OFFENSE SEVERITY REFERENCE TABLE

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

X	Murder 2 - 609.19
IX	Murder 3 - 609.195
VIII	Assault 1 - 609.221 Attempted Murder 1 - 609.185 with 609.17 or 609.175 cited Criminal Sexual Conduct 1 - 609.342 Kidnapping (w/great bodily harm) - 609.25, subd. 2(2) Manslaughter 1 - 609.20(1) & (2)
VII	Aggravated Robbery - 609.245 Arson 1 - 609.561 Criminal Sexual Conduct 2 - 609.343(c), (d), (e), & (f) Criminal Sexual Conduct 3 - 609.344(c) & (d) Kidnapping (not in safe place) - 609.25, subd. 2(2) Manslaughter 1 - 609.20(3) Manslaughter 2 - 609.205(1)
VI	Arson 2 - 609.562 Assault 2 - 609.222 Burglary - 609.58, subd. 2(1)(b) & (2) Criminal Sexual Conduct 2 - 609.343(a) & (b) Criminal Sexual Conduct 4 - 609.345(c) & (d) Escape from Custody - 609.485, subd. 4(4) Kidnapping - 609.25, subd. 2(1) Receiving Stolen Goods (over $2,500) - 609.525; 609.53 Sale of Hallucinogens or PCP - 152.15, subd. 1(2) Sale of Heroin - 152.15, subd. 1(1) Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(1)
V	Criminal Negligence Resulting in Death - 609.21 Criminal Sexual Conduct 3 - 609.344(b) Manslaughter 2 - 609.205(2), (3), & (4) Perjury - 609.48, subd. 4(1) Possession of Incendiary Device - 299F.80; 299F.815; 299F.811 Simple Robbery - 609.24 Solicitation of Prostitution - 609.322, subd. 1 Tampering w/Witness - 609.498, subd. 1
IV	Assault 3 - 609.223 Bribery - 609.42; 90.41 Bring Contraband into State Prison - 243.55 Bring Dangerous Weapon into County Jail - 641.165, subd. 2(b) Burglary - 609.58, subd. 2(1)(a), (c), & (3) Criminal Sexual Conduct 4 - 609.345(b) Negligent Fires - 609.576(a) Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4(2) Receiving Profit Derived from Prostitution - 609.323, subd. 1 Receiving Stolen Goods ($150-$2500) - 609.525; 609.53 Security Violations (over $2500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b) Terroristic Threats - 609.713, subd. 1 Theft Crimes - Over $2,500 *(See Theft Offense List)* Theft from Person - 609.52 Use of Drugs to Injure or Facilitate Crime - 609.235

Aggravated Forgery (over $2,500) - 609.625
Arson 3 - 609.563
Coercion - 609.27, subd. 1(1)
Coercion (Over $2,500) - 609.27, subd. 1(2), (3), (4), & (5)
Damage to Property - 609.595, subd. 1(1)
Dangerous Trespass - 609.60; 609.85(1)
Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1(b)
Escape from Custody - 609.485, subd. 4(1)
False Imprisonment - 609.255
Negligent Discharge of Explosive - 299F.83
Possession of Burglary Tools - 609.59

III

Possession of Hallucinogens or PCP - 152.15, subd. 2(2)
Possession of Heroin - 152.15, subd. 2(1)
Possession of Remaining Schedule I & II Narcotics - 152.15, subd. 2(1)
Prostitution (Patron) - 609.324, subd. 1
Receiving Profit Derived from Prostitution - 609.323, subd. 2
Sale of Cocaine - 152.15, subd. 1(2)
Sale of Remaining Schedule I, II, & III Non-narcotics - 152.15, subd. 1(2)
Security Violations (under $2500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
Solicitation of Prostitution - 609.322, subd. 2
Theft Crimes - $150-$2,500 *(See Theft Offense List)*
Theft of Public Records - 609.52
Theft Related Crimes - Over $2,500 *(See Theft Related Offense List)*

Aggravated Forgery ($150-$2,500) - 609.625
Aggravated Forgery (misc) (non-check) - 609.625; 609.635; 609.64
Coercion ($300-$2,500) - 609.27, subd. 1(2), (3), (4), & (5)
Damage to Property - 609.595, subd.1(2) & (3)
Negligent Fires (damage greater than $10,000) - 609.576(b)(4)

II

Riot - 609.71
Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(2)
Sale of a Schedule IV Substance - 152.15, subd. 1(3)
Terroristic Threats - 609.713, subd. 2
Theft-Looting - 609.52
Theft Related Crimes - $150-$2,500 *(See Theft Related Offense List)*

Aggravated Forgery (Less than $150) - 609.625
Aiding Offender to Avoid Arrest - 609.495
Forgery - 609.63; and Forgery Related Crimes *(See Forgery Related Offense List)*
Fraudulent Procurement of a Controlled Substance - 152.15, subd. 3
Leaving State to Evade Establishment of Paternity - 609.31
Nonsupport of Wife or Child - 609.375, subds. 2, 3, & 4

I

Possession of Cocaine - 152.15, subd. 2(2)
Possession of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 2(2)
Possession of Remaining Schedule I, II & III Non-narcotics - 152.15, subd. 2(2)
Possession of a Schedule IV Substance - 152.15, subd. 2(3)
Selling Liquor that Causes Injury - 340.70
Solicitation of Prostitution - 609.322, subd. 3
Unauthorized Use of Motor Vehicle - 609.55

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES ($150-$2,500 and over $2,500) in the Offense Severity Reference Table.

Altering Serial Number
609.52, Subd. 2(10)(11)

Diversion of Corporate Property
300.60

Embezzlement of Public Funds
609.54

Failure to Pay Over State Funds
609.445

Permitting False Claims Against Government
609.455

Possession of Shoplifting Gear
609.521

Rustling and Livestock Theft
609.551

Theft
609.52, Subd. 2(1)

Theft by Soldier of Military Goods
192.36

Theft by Trick
609.52, Subd. 2(4)

Theft of Public Funds
609.52

Theft of Trade Secret
609.52, Subd. 2(8)

Theft Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT RELATED CRIMES ($150-$2,500 and over $2,500) in the Offense Severity Reference Table.

Defeating Security on Personality
609.62

Defeating Security on Realty
609.615

Defrauding Insurer
609.611

Fraud in Obtaining Credit
609.82

Fraudulent Long Distance Telephone Calls
609.785

Medical Assistance Fraud
609.466

Presenting False Claims to Public Officer or Body
609.465

Refusing to Return Lost Property
609.52, Subd. 2(6)

Taking Pledged Property
609.52, Subd. 2(2)

Temporary Theft
609.52, Subd. 2(5)

Theft by Check
609.52, Subd. 2(3)

Theft of Cable TV Services
609.52, Subd. 2(12)

Theft of Leased Property
609.52, Subd. 2(9)

Unauthorized Use of Credit Card
609.52, Subd. 2(3)

Wrongfully Obtaining Assistance
256.98

Forgery Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the FORGERY and FORGERY RELATED CRIMES in the Offense Severity Reference Table.

Altering Livestock Certificate
35.824

Altering Packing House Certificate
226.05

Destroy Or Falsify Private Business Record
609.63, subd. 1(5)

Destroy Or Falsify Public Record
609.63, subd. 1(6)

Destroy Writing To Prevent Use At Trial
609.63, subd. 1(7)

False Bill Of Lading
228.45; 228.47; 228.49; 228.50; 228.51

False Certification By Notary Public
609.65

False Membership Card
609.63, subd. 1(3)

False Merchandise Stamp
609.63, subd. 2(2)

Fraudulent Statements
609.645

Obtaining Signature By False Pretense
609.635

Offer Forged Writing At Trial
609.63, subd. 2

Recording, Filing of Forged Instrument
609.64

Use False Identification
609.63, subd. 1(1)

I

A bill for an act

relating to the use of juvenile records in sentencing; amending Minnesota statutes 1978, sections 260.161, subd. 1, and 260.211, subd. 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota statutes 1978, section 260.161, subd. 1, is amended to read:

Subdivision 1. The juvenile court judge shall keep such minutes and in such manner as he deems necessary and proper. The court shall also keep an index in which files pertaining to juvenile matters shall be indexed under the name of the juvenile. After the name of each file shall be shown the file number and, if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed. The court shall also keep a register properly indexed in which shall be listed under the name of the juvenile all documents filed pertaining thereto and in the order filed. Such list shall show the name of the document and the date of filing thereof. The juvenile court legal records shall be deposited in the files and shall include the petition, summons, notice, findings, orders, decrees, judgments, and motions and such other matters as the court deems necessary and proper. The legal records maintained in this file shall be open at all reasonable times to the inspection of any minor to whom the records relate, and to his parent and guardian. The court shall maintain records pertaining to delinquency adjudications until the person attains the age of 23 years and shall release such records to a requesting adult court for purposes of sentencing under the appropriate guidelines.

Section 2. Minnesota statutes 1978, section 260.211, subd. 1, is amended to read:

Subdivision 1. No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime. The disposition of the child or any evidence given by the child in the juvenile court shall not be admissible as evidence against him in any case or proceeding in any other court, except that an adjudication may later be used to determine a proper sentence, nor shall the disposition or evidence disqualify him in any future civil service examination, appointment, or application.

II

A bill for an act

relating to the performance of presentence investigations in criminal cases; amending Minnesota statutes (1979 Supp.), section 609.115, subd. 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota statutes 1979 Supplement, section 609.115, subd. 1, is amended to read:

Subdivision 1. When a defendant has been convicted of a felony the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense, and the harm caused thereby to others and to the community. The report shall include such further information as is deemed necessary by the Minnesota sentencing guidelines commission to facilitate the implementation of sentencing guidelines and the monitoring of sentencing practices in accordance with section 244.09. If the court so directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections.

Pending the presentence investigation and report, the court with the consent of the commissioner may commit the defendant to the custody of the commissioner of corrections who shall return the defendant to the court when the court so orders.

III

A bill for an act

relating to the monitoring of sentencing guidelines; amending Minnesota statutes 1978, section 244.09, subd. 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota statutes 1978, section 244.09, subd. 6, is amended to read:

Subd. 6. The commission, in addition to establishing sentencing guidelines, shall serve as a clearing house and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. To facilitate the monitoring of sentencing practices, sentencing courts shall submit to the commission information reasonably related to the monitoring function as required by the commission. The commission shall from time to time make recommendations to the legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.

CHAPTER 723-S.F.No.65

[Coded in Part]

An act relating to crimes; establishing a commission on sentencing guidelines; prescribing its membership, duties and powers; requiring the promulgation of sentencing guidelines; prescribing the use of the guidelines; establishing procedures for the management and supervision of inmates of state correctional institutions; prescribing the duties of the commissioner of corrections and the board of corrections; appropriating money; amending Minnesota Statutes 1976, Sections 241.26, Subdivision 1; 609.10; 609.11, by adding a subdivision; 609.115, Subdivision 1; 609.135, by adding a subdivision; 609.145, Subdivision 1; 609.165, Subdivision 2; and 609.346, Subdivision 1; and Minnesota Statutes, 1977 Supplement, Section 241.045, Subdivision 4; repealing Minnesota Statutes 1976, Sections 243.14; 243.18; 246.43, as amended; 609.11, Subdivision 2; 609.155 and 609.16.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE I

Section 1. **[244.01] DEFINITIONS.** Subdivision 1. For purposes of sections 1 to 11, the following terms shall have the meanings given them.

Subd. 2. "Inmate" means any person who is convicted of a felony, is committed to the custody of the commissioner of corrections and is confined in a state correctional institution or released from a state correctional institution pursuant to sections 5, 7 or 12.

Subd. 3. "Commissioner" means the commissioner of corrections or his designee.

Subd. 4. "Correctional institution" means any state institution under the operational authority of the commissioner of corrections.

Subd. 5. "Good time" means the period of time by which an inmate's term of imprisonment is reduced pursuant to section 4.

Subd. 6. "Commission" means the Minnesota sentencing guidelines commission established pursuant to section 9.

Subd. 7. "Supervised release" means the release of an inmate pursuant to section 5.

Subd. 8. "Term of imprisonment" is a period of time equal to the period of time to which the inmate is committed to the custody of the commissioner of corrections following a conviction for a felony.

Sec. 2. **[244.02] MUTUAL AGREEMENT PROGRAMS.** Subdivision 1. Within seven days after the commissioner assumes custody of an inmate, he shall inform the inmate of the availability and scope of mutual agreement programs and of the fact that participation by the inmate is optional and has no effect on the length of his sentence. If the inmate decides to enter into a mutual agreement program, the commissioner shall draft one for the inmate within 90 days after receiving a request to do so from the inmate. The mutual agreement program shall be drafted after a classification study of the inmate has been made by the commissioner. In drafting a mutual agreement program, the commissioner shall also refer to the presentence investigation which has been made of the inmate. The agreement shall provide the following:

(a) A program of vocational or educational training with specific chronological and achievement objectives, including completion of specified educational and vocational programs;

(b) Frequent and regular evaluation of the inmate by the commissioner; and

(c) A consideration of any educational qualifications or skills of the inmate when specifying certain types of work expectations.

The participation of inmates in the mutual agreement program shall be limited by the appropriations made for that purpose.

Subd. 2. The inmate may decline to enter into the agreement drafted by the commissioner. Failure to enter into an agreement shall not affect the earning of good time by an inmate, nor shall violation of the terms of the agreement constitute a disciplinary offense which may result in the loss of good time.

Sec. 3. **[244.03] VOLUNTARY PROGRAMS.** The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates who desire to voluntarily participate in such programs. The selection, design and implementation of programs under this section shall be the sole responsibility of the commissioner, acting within the limitations imposed on him by the funds appropriated for such programs.

No action challenging the level of expenditures for programs authorized under this section, nor any action challenging the selection, design or implementation of these programs, may be maintained by an inmate in any court in this state.

Sec. 4. **[244.04] GOOD TIME.** Subdivision 1. An inmate's term of imprisonment shall be reduced in duration by one day for each two days during which the inmate violates none of the disciplinary offense rules promulgated by the commissioner. The reduction shall accrue to the period of supervised release to be served by the inmate.

If an inmate violates a disciplinary offense rule promulgated by the commissioner, good time earned prior to the violation may not be taken away, but the inmate may be required to serve an appropriate portion of his term of imprisonment after the violation without earning good time.

Subd. 2. By May 1, 1980, the commissioner shall promulgate rules specifying disciplinary offenses which may result in the loss of good time and the amount of good time which may be lost as a result of each disciplinary offense. In no case shall an individual disciplinary offense result in the loss of more than 90 days of good time. The loss of good time shall be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for the loss of good time and the rights of the inmate in the procedure shall be those in effect for the imposition of other disciplinary sanctions at each state correctional institution.

Subd. 3. The provisions of this section do not apply to an inmate serving a

mandatory life sentence.

Sec. 5. **[244.05] SUPERVISED RELEASE TERM.** Subdivision 1. Except as provided in subdivisions 4 and 5, every inmate shall serve a supervised release term upon completion of his term of imprisonment as reduced by any good time earned by the inmate. The supervised release term shall be equal to the period of good time the inmate has earned, and shall not exceed the length of time remaining in the inmate's sentence.

Subd. 2. The Minnesota corrections board shall promulgate rules for the placement and supervision of inmates serving a supervised release term. The rules shall also provide standards and procedures for the revocation of supervised release, and shall specify the period of revocation for each violation of supervised release. Procedures for the revocation of supervised release shall provide due process of law for the inmate.

Subd. 3. If an inmate violates the conditions of his supervised release imposed by the Minnesota corrections board, the board may:

(1) Continue the inmate's supervised release term, with or without modifying or enlarging the conditions imposed on the inmate; or

(2) Revoke the inmate's supervised release and reimprison him for the appropriate period of time.

The period of time for which a supervised release may be revoked may not exceed the period of time remaining in the inmate's sentence.

Subd. 4. An inmate serving a mandatory life sentence shall not be given supervised release under this section unless he has served a minimum term of imprisonment of 17 years.

Subd. 5. The Minnesota corrections board may, under rules promulgated by it, give supervised release to an inmate serving a mandatory life sentence after he has served the minimum term of imprisonment specified in subdivision 4.

Sec. 6. **[244.06] EXTRAORDINARY DISCHARGE.** The Minnesota corrections board may give extraordinary discharge to an inmate for reasons of serious health problems, senility, advanced age or other extraordinary circumstances. The board shall promulgate rules specifying the circumstances under which extraordinary discharge may be approved by the board and the appropriate procedures for approving the same. No extraordinary discharge shall be effective unless also approved by the Minnesota board of pardons.

Sec. 7. **[244.07] FURLOUGHS.** Subdivision 1. If consistent with the public interest, the commissioner may, under rules prescribed by him, furlough any inmate in his custody to any point within the state for up to five days. A furlough may be granted to assist the inmate with family needs, personal health needs, or his reintegration into society. No inmate may receive more than three furloughs under this section within any 12 month period.

Subd. 2. Notwithstanding the provisions of subdivision 1, if the commissioner determines that the inmate requires health care not available at the state correctional institution, he may grant the inmate the furloughs necessary to provide appropriate noninstitutional or extra-institutional health care.

Sec. 8. **[244.08] MINNESOTA CORRECTIONS BOARD; COMMISSIONER.** Subdivision 1. Effective May 1, 1980, the Minnesota corrections board shall have only those powers and duties vested in and imposed upon it in sections 1 to 16 with relation to persons sentenced for crimes committed on or after May 1, 1980.

The Minnesota corrections board shall retain all powers and duties presently vested in and imposed upon it with relation to persons sentenced for crimes committed on or before April 30, 1980.

The Minnesota corrections board shall take into consideration, but not be bound by, the sentence terms embodied in the sentencing guidelines promulgated by the Minnesota sentencing guidelines commission and the penal philosophy embodied in sections 1 to 16 in its deliberations relative to parole, probation, release, or other disposition of inmates who commit the crimes giving rise to their sentences on or before April 30, 1980.

Subd. 2. Nothing in sections 1 to 16 shall be deemed to limit the powers and duties otherwise provided by law to the commissioner of corrections with regard to the management of correctional institutions or the disposition of inmates unless those powers and duties are inconsistent with the provisions of sections 1 to 16, in which case those powers and duties shall be superseded by sections 1 to 16.

Sec. 9. **[244.09] MINNESOTA SENTENCING GUIDELINES COMMISSION.** Subdivision 1. There is hereby established the Minnesota sentencing guidelines commission which shall be comprised of nine members.

Subd. 2. The sentencing guidelines commission shall consist of the following:

(1) The chief justice of the supreme court or his designee;

(2) Two district court judges appointed by the chief justice of the supreme court;

(3) One public defender appointed by the governor upon recommendation of the state public defender;

(4) One county attorney appointed by the governor upon recommendation of the board of governors of the county attorneys council;

(5) The commissioner of corrections or his designee;

(6) The chairman of the Minnesota corrections board or his designee; and

(7) Two public members appointed by the governor.

One of the members shall be designated by the governor as chairman of the commission.

Subd. 3. Each appointed member shall be appointed for four years and shall continue to serve during that time as long as he occupies the position which made him eligible for the appointment. Each member shall continue in office until his successsor is duly appointed. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term. The members of the commission shall elect any additional officers necessary for the efficient discharge of their duties.

Subd. 4. Each member of the commission shall be reimbursed for all reasonable expenses actually paid or incurred by him in the performance of his official duties in the same manner as other employees of the state. The public members of the commission shall be compensated at the rate of $50 for each day or part thereof spent on commission activities.

Subd. 5. The commission shall, on or before January 1, 1980, promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

(1) The circumstances under which imprisonment of an offender is proper; and

(2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

In establishing the sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities.

The provisions of sections 15.0411 to 15.052 do not apply to the promulgation of the sentencing guidelines.

Subd. 6. The commission, in addition to establishing sentencing guidelines, shall serve as a clearing house and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding sentencing guidelines, use of imprisonment and

alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall from time to time make recommendations to the legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.

Subd. 7. The commission shall study the impact of the sentencing guidelines promulgated by the commission after their implementation. The commission shall also, after implementation of the guidelines, review the powers and duties of the Minnesota corrections board and make recommendations to the legislature on the appropriate role, if any, of the board under the guidelines.

Subd. 8. The commissioner of corrections shall provide adequate office space and administrative services for the commission, and the commission shall reimburse the commissioner for the space and services provided. The commission may also utilize, with their consent, the services, equipment, personnel, information and resources of other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.

Subd. 9. When any person, corporation, the United States government, or any other entity offers funds to the sentencing guidelines commission to carry out its purposes and duties, the commission may accept the offer by majority vote and upon acceptance the chairman shall receive the funds subject to the terms of the offer, but no money shall be accepted or received as a loan nor shall any indebtedness be incurred except in the manner and under the limitations otherwise provided by law.

Subd. 10. The commission may select and employ a research director who shall perform the duties the commission directs, including the hiring of any clerical help and other employees as the commission shall approve. The research director and other staff shall be in the unclassified service of the state and their salary shall be established by the commission. They shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees.

Subd. 11. The commission shall meet as necessary for the purpose of modifying and improving the guidelines.

Subd. 12. The guidelines shall be submitted to the legislature on January 1, 1980, and shall be effective May 1, 1980, unless the legislature provides otherwise.

Sec. 10. **[244.10] SENTENCING HEARING; DEVIATION FROM GUIDELINES.** Subdivision 1. **SENTENCING HEARING.** Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issue of sentencing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the sentencing hearing. Prior to the hearing, the court shall transmit to the defendant or his attorney and the prosecuting attorney copies of the presentence

investigation report.

At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

Subd. 2. **DEVIATION FROM GUIDELINES.** Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the sentencing guidelines in each case in which the court imposes or stays a sentence that deviates from the sentencing guidelines applicable to the case.

Sec. 11. **[244.11] APPELLATE REVIEW OF SENTENCE.** An appeal to the supreme court may be taken by the defendant or the state from any sentence imposed or stayed by the district court according to the rules of criminal procedure for the district court of Minnesota. A dismissal of an appeal brought under this section shall not prejudice an appeal brought under any other section or rule.

When an appeal taken under this section is filed, the clerk of the district court shall certify to the supreme court the transcript of the proceedings and any files or records relating to the defendant, the offense, and the sentence imposed or stayed, that the supreme court by rule or order may require.

On an appeal pursuant to this section, the supreme court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court. This review shall be in addition to all other powers of review presently existing. The supreme court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the supreme court may direct.

This section shall not be construed to confer or enlarge any right of a defendant to be released pending an appeal.

Sec. 12. Minnesota Statutes 1976, Section 241.26, Subdivision 1, is amended to read:

241.26 **PRIVATE EMPLOYMENT OF INMATES OF STATE CORRECTIONAL INSTITUTIONS IN COMMUNITY.** Subdivision 1. **BOARD.** ~~The corrections board upon recommendation of the commissioner of corrections may conditionally release selected inmates of state correctional institutions who are subject to their control, who have been convicted of a gross misdemeanor or a felony, and who are eligible and being considered for parole under section 243.05, to work at paid employment, seek employment, or to participate in vocational training programs in any community or area of the state, provided that (a) representatives of local union central bodies or similar labor union organizations are consulted; and (b) such paid employment will not result in the displacement of employed workers~~ When consistent with the public

Changes or additions indicated by underline **deletions by** ~~strikeout~~

interest and the public safety, the board may, with the recommendation of the commissioner, conditionally release an inmate to work at paid employment, seek employment, or participate in a vocational training or educational program, if the inmate has served at least one-half of his term of imprisonment as reduced by good time earned by the inmate. ~~Such~~ Release under this subdivision constitutes an extension of the limits of confinement and each inmate so released shall be confined in the institution from which released or in some other suitable place of confinement designated by the commissioner of corrections during ~~such time as such inmate~~ the hours he is not employed, seeking employment, or engaged in a vocational training or educational program, or, if employed, seeking employment, or engaged in a vocational training or educational program, between the ~~times~~ hours of such activity. A reasonable allowance for travel time and meals shall be permitted.

Sec. 13. Minnesota Statutes 1976, Section 609.10, is amended to read:

609.10 **SENTENCES AVAILABLE.** Upon conviction of a felony and compliance with the other provisions of this chapter the court, if it imposes sentence, may sentence the defendant to the extent authorized by law as follows:

(1) To life imprisonment; or

(2) To imprisonment for a ~~maximum~~ fixed term of years ~~fixed~~ set by the court; or

~~(3) To an indeterminate term of imprisonment which shall be deemed to be for the maximum term authorized by law; or~~

~~(4)~~ (3) To both imprisonment for a fixed term of years and payment of a fine; or

~~(5)~~ (4) To payment of a fine without imprisonment or to imprisonment for a fixed term of years if the fine is not paid.

Sec. 14. Minnesota Statutes 1976, Section 609.145, Subdivision 1, is amended to read:

609.145 **CREDIT FOR PRIOR IMPRISONMENT.** Subdivision 1. When a person has been imprisoned pursuant to a conviction which is set aside and is thereafter convicted of a crime growing out of the same act or omission, the ~~maximum~~ period of imprisonment to which he ~~may be~~ is sentenced is reduced by the period of the prior imprisonment and the time earned thereby in diminution of sentence. ~~If sentence is for less than this maximum, the prior imprisonment and time earned in diminution of sentence shall be credited toward the sentence unless the court otherwise directs.~~

Sec. 15. Minnesota Statutes 1976, Section 609.165, Subdivision 2, is amended to read:

Subd. 2. The discharge may be:

(1) By order of the court following stay of sentence or stay of execution of

sentence; or

~~(2) By order of the corrections board prior to expiration of sentence; or~~

~~(3)~~ (2) Upon expiration of sentence.

Sec. 16. Minnesota Statutes 1976, Section 609.346, Subdivision 1, is amended to read:

609.346 **SUBSEQUENT OFFENSES.** Subdivision 1. If a person is convicted of a second or subsequent offense under sections 609.342 to 609.346 within 15 years of the prior conviction, the court shall commit the defendant to the commissioner of corrections for imprisonment for a term of not less than three years, nor more than the maximum sentence provided by law for the offense for which convicted ~~:, provided, however, that the court may invoke the provisions of section 609.135, if a specific condition of the probationary term under section 609.135 includes the successful completion of a treatment program for anti-social sexual behavior, and such person shall not be eligible for parole from imprisonment until he shall either have served the full minimum sentence herein provided, or until he shall have successfully completed a treatment program for anti-social sexual behavior as herein provided~~ notwithstanding the provisions of sections 242.19, 243.05, 609.11, 609.12 and 609.135.

Sec. 17. In the next and subsequent editions of the Minnesota Statutes, the revisor of statutes shall make such change in terminology as may be necessary to record the functions, powers and duties of the commissioner of corrections and the Minnesota corrections board as established by this article.

Sec. 18. **APPROPRIATION.** There is appropriated from the general fund to the Minnesota sentencing guidelines commission established pursuant to section 9, the sum of $200,000 for the biennium ending June 30, 1979.

Sec. 19. **REPEALER.** Minnesota Statutes 1976, Sections 243.14; 243.18; 246.43, as amended by Laws 1977, Chapter 130, Section 1; 609.155 and 609.16 are repealed.

Sec. 20. **EFFECTIVE DATE.** Subdivision 1. Sections 9 and 18 are effective the day following final enactment.

Subd. 2. Sections 1 to 8, 10 to 17, and 19 are effective May 1, 1980, and apply to all offenses committed on or after that date and to all persons convicted of a felony committed on or after that date.

ARTICLE II

Section 1. Minnesota Statutes, 1977 Supplement, Section 241.045, Subdivision 4, is amended to read:

Subd. 4. **COMPENSATION; EXPENSES.** Each member of the board other than the chairman shall receive ~~as~~ compensation ~~the sum of $22,000 per year, payable~~ in the

same manner as other employees of the state. The chairman of the board shall receive as compensation his salary as an officer of the department of corrections, which shall not be less than the salary of the other members of the board. In addition to the compensation herein provided, each member of the board shall be reimbursed for all expenses paid or incurred by him in the performance of his official duties in the same manner as other employees of the state. This compensation and these expenses shall be paid out of the general fund in the same manner as the salaries and expenses of other state officers are paid, except that the salary and expenses of the chairman of the board shall be paid out of funds appropriated to the commissioner of corrections.

Sec. 2. Minnesota Statutes 1976, Section 609.11, is amended by adding a subdivision to read:

Subd. 3. If during the commission of any of the crimes set forth in subdivision 1, the defendant possessed a firearm or used a dangerous weapon, the prosecution shall allege that matter in the complaint or indictment.

Sec. 3. Minnesota Statutes 1976, Section 609.115, Subdivision 1, is amended to read:

609.115 **PRESENTENCE INVESTIGATION.** Subdivision 1. When a defendant has been convicted of a felony~~, and a sentence of life imprisonment is not required by law,~~ the court ~~may~~ shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused thereby to others and to the community. If the court so directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections.

Pending the presentence investigation and report, the court with the consent of the commissioner may commit the defendant to the custody of the commissioner of corrections who shall return the defendant to the court when the court so orders.

Sec. 4. Minnesota Statutes 1976, Section 609.135, is amended by adding a subdivision to read:

Subd. 4. The court may, as a condition of probation, require the defendant to serve up to one year incarceration in a county jail, a county regional jail, a county workfarm, county workhouse or other local correctional facility. The court may allow the defendant the work release privileges of section 631.425 during the period of incarceration.

Sec. 5. **REPEALER.** Minnesota Statutes 1976, Section 609.11, Subdivision 2, is repealed.

Sec. 6. **EFFECTIVE DATE.** Sections 1 to 5 are effective the day following final enactment, and apply to all offenses committed on or after that date.

Approved April 5, 1978.

DEFINITION OF TERMS

Presumptive Fixed Sentences are those sentences provided in the Sentencing Guidelines Grid. They are presumptive because they are presumed to be appropriate for typical cases sharing criminal history and offense severity characteristics. They are fixed because anyone committed to the custody of the Commissioner of Corrections will serve the duration provided in the appropriate cell of the Sentencing Guidelines Grid, less good time, before release (provided the judge does not depart from the guideline recommendation).

Departures from the presumptive fixed sentence occur when the judge gives a sentence that differs from that provided in the Sentencing Guidelines Grid. When substantial and compelling aggravating or mitigating circumstances exist, the judge may depart from the guideline recommendation and provide any sentence authorized by law. When departing from the guidelines, the judge must provide written reasons which distinguish the current case from the usual or typical case, and which demonstrate why the sentence given is more appropriate or fair than the guideline recommendation.

Good Time will reduce the term of imprisonment one day for every two days of good behavior for those committed to the Commissioner of Corrections following conviction of crimes which occurred on or after May 1, 1980. Good time earned accrues to a period of supervised release. Earned good time is vested, and cannot be taken away for misconduct. Earning of future good time may be restricted upon conviction for disciplinary violations promulgated by the Commissioner of Corrections.

Term of Imprisonment is the length of the prison sentence reduced by earned good time for those committed to the Commissioner of Corrections for crimes occurring on or after May 1, 1980. When such an offender is committed, the sentence and the term of imprisonment are the same; as the offender earns good time, the sentence remains the same, but the term of imprisonment is shortened by the amount of good time earned.

Supervised Release is a period of mandatory community supervision following the end of the term of imprisonment for offenders committed to the custody of the Commissioner of Corrections for offenses occurring on or after May 1, 1980. The period of supervised release equals the amount of good time earned. The Minnesota Corrections Board (MCB) establishes conditions which the offender must obey during supervised release, and if those conditions are violated, the MCB may revoke the supervised release and return the offender to prison for a period not to exceed the time left on the sentence.

Day Fines are a monetary penalty assessed on an equality formula determined by the seriousness of the offense and the offender's financial status -- i.e., a burglary conviction may be assigned a value of "50 day fines"; the annual income of an offender with earnings of $20,000 would be reduced to a 'one-tenth of one percent' per diem figure of $20, and would be assessed a "day fine" penalty of $1,000, whereas an offender with annual earnings of $10,000, based on the same formula, would be assessed a penalty of $500.

Community Work Orders are a form of restitution. They are services to be performed by the offender to the community at large for a specified period of time as directed by the judge. For example, a lawyer may be directed to provide one day per week of free legal services to the community for a period of five years; or a youth may be directed to rake leaves and/or shovel snow two days per week for the elderly in the community for a period of one year.

Stay of Imposition/Stay of Execution - There are two steps in sentencing--the imposition of a sentence, and the execution of the sentence which was imposed. The imposition of a sentence consists of pronouncing the sentence to be served in prison (for example, three years imprisonment). The execution of an imposed sentence consists of transferring the felon to the custody of the Commissioner of Corrections to serve the prison sentence. A stayed sentence may be accomplished by either a stay of imposition or a stay of execution.

If a stay of imposition is granted, the imposition (or pronouncement) of a prison sentence is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions until that date, the case is discharged, and for civil purposes (employment applications, etc.) the offender has a record of a misdemeanor rather than a felony conviction.

If a stay of execution is granted, a prison sentence is pronounced, but the execution (transfer to the custody of the Commissioner of Corrections) is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions, the case is discharged, but the offender continues to have a record of a felony conviction.