

**MINNESOTA SENTENCING GUIDELINES
and COMMENTARY**

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MINNESOTA SENTENCING GUIDELINES AND COMMENTARY

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."

Comment

II.A.01. Offense severity is determined by the offense of conviction. The Commission thought that serious legal and ethical questions would be raised if punishment were to be determined on the basis of alleged, but unproven, behavior, and prosecutors and defenders would be less accountable in plea negotiation. It follows that if the offense of conviction is the standard from which to determine severity, departures from the guidelines should not be permitted for elements of offender behavior not within the statutory definition of the offense of conviction. Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.

II.A.02. The date of the offense is important because the offender's age at the time of the offense will determine whether or not the juvenile record is considered, and the date of the offense might determine whether a custody status point should be given. For those convicted of a single offense, there is no problem in determining the date of the offense. For those convicted of multiple offenses, the following rules should apply in determining the date of the offense:

- a. The date of the most severe offense should be used. If there are two or more convictions of equal severity, and none of a higher severity, the earliest of the offenses should be used to establish the date of the offense.*
- b. If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the offense.*

If the date of offense established by the above rules is on or before April 30, 1980, the sentencing guidelines should not be used to sentence the case.

II.A.03. The following offenses were excluded from the Offense Severity Reference Table:

1. Abortion - 617.20; 617.22; 145.412
2. Aiding suicide - 609.215
3. Altering engrossed bill - 3.191
4. Animal fighting - 346.29
5. Bigamy - 609.355
6. Corrupting legislator - 609.43
7. Criminal Sexual Conduct, Third Degree - 609.344(a)
(By definition the perpetrator must be a juvenile.)
8. Criminal Sexual Conduct, Fourth Degree - 609.345(a)
(By definition the perpetrator must be a juvenile.)
9. Criminal syndicalism - 609.405
10. Incest - 609.365
11. Misprison of treason - 609.39
12. Obscenity re minors - 617.246
13. Obstructing military forces - 609.395
14. Treason - 609.385

II.A.04. Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes. The Commission believes that this practice provides more anonymity to the victim than would be possible for prosecutions under the incest statute. If an offender is convicted of incest under Minn. Stat. § 609.365, and when the offense would have been a violation of one of the criminal sexual conduct statutes, the severity level of the applicable criminal sexual conduct statute should be used. For example, if a father is convicted of incest for the sexual penetration of his ten year old daughter, the appropriate severity level would be the same as criminal sexual conduct in the first degree. On the other hand, when the incest consists of behavior not included in the criminal sexual conduct statutes (for example, consenting sexual penetration involving individuals over age 16) that offense behavior is excluded from the Offense Severity Reference Table.

II.A.05. The other offenses were excluded because prosecutions are rarely, if ever, initiated under them. There were no convictions for these excluded offenses during our fiscal year 1978 study. The Commission's ranking of offense severity was based on offense behavior that is usually associated with a particular offense. Where there have been no prosecutions under a particular statute, it is impossible to rank it on the basis of experience or usual practice. If, in the future, persons are convicted of offenses excluded from the Offense Severity Reference Table, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. If a significant number of future convictions are obtained under one or more of the excluded offenses, the Commission will determine an appropriate severity level, and will add the offense to the 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.

Comment

II.B.01. The sentencing guidelines reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary

factor in dispositional decisions. Under sentencing guidelines, the offense of conviction will become the primary factor, and criminal history will be a secondary factor in dispositional decisions. In the past there were no uniform standards regarding what should be included in an offender's criminal history, no weighting format for different types of offenses, and no systematic process to check the accuracy of the information on criminal history.

II.B.02. The guidelines will provide uniform standards for the inclusion and weighting of criminal history information. With that accomplished, the sentencing hearing can become a more effective process to assure the accuracy of the information in individual cases. Because the same criminal history information sources will be used before and after implementation of the guidelines, these improvements will increase fairness and equity in the consideration of criminal history.

II.B.03. No system of criminal history record keeping ever will be totally accurate and complete, and any sentencing system will have to rely on the best available criminal history information.

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. § 609.545, 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 sentences 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 received a felony, gross misdemeanor, or misdemeanor sentence.

Comment

II.B.101. Commission research showed that number of prior felony convictions was the aspect of prior criminal record most strongly related to the sentencing decision. The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned one point for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing. The phrase "for which sentence was stayed or imposed" refers to multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense. In such cases, the offender would receive one point on the criminal history score for each sentence, regardless of the number of felony convictions arising from the single behavioral incident. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the sentence for the prior offense must have been stayed or imposed before the date of sentencing for the current offense.

II.B.102. In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 609.585, under which persons committing theft or other felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and other felony. In all other instances of multiple convictions arising from a single course of conduct, where there is a single victim, persons may be sentenced on only one offense. For purposes of computing criminal history, the Commission decided that prior multiple sentences under provision of Minn. Stat. § 609.585 should also receive one point. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to that statute, to prevent systematic manipulation of 609.585 in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, where single victims are involved.

II.B.103. To limit the impact of past variability in prosecutorial discretion, the Commission placed a limit of two points on computing prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims. For example, if an offender had robbed a crowded liquor store, he could be convicted of and sentenced for the robbery, as well as one count of assault for every person in the store at the time of the offense. Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission placed a limit of two points in such situations. This still allows differentiation between those getting multiple sentences in such situations from those getting single sentences, but it prevents the perpetuation of gross disparities from the past.

II.B.104. When an offender was convicted of a felony but was given a misdemeanor or gross misdemeanor sentence, the offense will be counted as a misdemeanor or gross misdemeanor for purposes of computing the criminal history score. The Commission recognized that the classification of criminal conduct as with a felony, misdemeanor, or gross misdemeanor is determined, legally, by the sentence given rather than the conviction offense. They also recognized that where such sentences were given, it was the opinion of the judge that the offending behavior did not merit felonious punishment, or other circumstances existed which justified a limit on the severity of the sanction.

II.B.105. However, when a prior felony conviction resulted in a stay of imposition which was successfully served, the offense will be counted as a felony for purposes of computing criminal history scores for five years from the date of discharge or expiration of the stay, and thereafter would be considered a misdemeanor. Under

Minn. Stat. § 609.13, a person who successfully completes a stay of imposition is deemed to have been convicted of a misdemeanor, not a felony. The Commission thought that the primary purpose of this provision was to protect those who do not recidivate from civil disabilities that may attach to being convicted of a felony, rather than to provide a blanket immunity from having prior felonious behavior considered at future sentencing for those who do recidivate with a new felony offense. The effect of the Commission's five-year limit on considering such sentences as felony convictions, together with the "decay factor" on misdemeanor records (Criminal History item 3c, below) is that stays of imposition following felony convictions shall be counted as a felony for five years from the date of discharge, and thereafter shall not be used in computing criminal history scores, provided the offender was not convicted of a new misdemeanor, gross misdemeanor, or felony during that five-year period. (The offense of conviction is a felony if the maximum imprisonment sentence authorized by statute is at least one year and one day.)

II.B.106. Finally, the Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences, but also the time interval between those sentences. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-year period. The Commission decided that after a significant period of conviction-free living, the presence of old felony sentences should not be considered in computing criminal history scores. Prior felony sentences would not be counted in criminal history score computation if ten years had elapsed since the date of discharge from or expiration of the sentence, provided that during the ten-year period, the individual was not sentenced for a felony, gross misdemeanor, or misdemeanor. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the conviction-free period.

II.B.107. If the offender's prior record involves convictions of offenses for which fines were the only sanction given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:

<u>If fine imposed is between:</u>	<u>Classify offense as:</u>
\$101 - \$500	Misdemeanor
\$501 - \$1,000	Gross Misdemeanor
more than \$1,000	Felony

If a fine is \$100 or less, and that is the only sanction imposed, the conviction would be deemed a petty misdemeanor under Minn. R. Crim. P. § 23.02, and would not be used to compute the criminal history score. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. § 23.04, will not be used to compute the criminal history score.

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. § 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.

Comment

II.B.201. Commission research indicated that custody status of the offender at the time of the offense was strongly related to the sentencing decision. The basic rule assigns offenders one point if they were under some form of criminal justice custody following conviction of a felony or gross misdemeanor when the offense was committed for which they are now being sentenced. Criminal justice custodial status includes probation (supervised or unsupervised), parole, supervised release, or confinement in a jail, workhouse, or prison, or work release, following conviction of a felony or gross misdemeanor, or release pending sentencing following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor. Commitments under Minn. R. Crim. P. § 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and, in the future, supervised release will be the custodial statuses that most frequently will result in the assignment of a point. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony or gross misdemeanor. Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.

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 sentences 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 received a felony, gross misdemeanor, or misdemeanor sentence.

Comment

II.B.301. Commission research indicated that, overall, an offender's misdemeanor or gross misdemeanor record was not highly associated with judicial sentencing decisions. However, the Commission included misdemeanor and gross misdemeanor record as an appropriate measure of prior criminal record. The Commission established a measurement procedure based on units which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors are assigned one unit, and gross misdemeanors are assigned two units. An offender must have a total of four units to receive one point on the criminal history score. No partial points are given--thus, a person with three units is assigned no point value. The Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. The Commission decided that the only traffic offense which was reasonably related to a later criminal sentencing decision would be aggravated driving while intoxicated, and that aggravated DWI would be relevant in a very limited number of cases--only when the offender was later convicted of criminal negligence. Because this circumstance would occur rarely, the Commission decided that use of aggravated DWI in computing all criminal histories would be inappropriate, because one objective of sentencing guidelines is to establish general policies of general relevance.

II.B.302. The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done for two reasons: (a) research indicated that misdemeanor and gross misdemeanor convictions were not strongly related to judicial decision making, and to allow substantial point accrual for such items would be a departure from past sentencing practices; and (b) with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to those which are misdemeanors under existing state statute, or ordinance misdemeanors which substantially conform to existing state statutory misdemeanors. This was done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias.

II.B.303. The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a two-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.

II.B.304. The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. If five years have elapsed since the expiration of or discharge from a misdemeanor or gross misdemeanor sentence, and if during that five-year period the offender had not been sentenced for a misdemeanor, gross misdemeanor, or felony, the misdemeanor or gross misdemeanor sentences will not be used in computing the criminal history score. (Traffic offenses are excluded in computing the decay factor.)

It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the conviction-free period.

II.B.305. *If an offender was convicted of a gross misdemeanor, but given a misdemeanor sentence, that is counted as a misdemeanor in computing the criminal history score.*

II.B.306. *Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. § 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. § 23.02, will not be used to compute the criminal history score.*

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.

Comment

II.B.401. *Commission research showed that an offender's record of felony-type juvenile adjudications was an important factor in judicial sentencing decisions for young adult felons. The juvenile history item is included in the criminal history index to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history index. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

II.B.402. *First, only juvenile adjudications that would have been felonies if committed by an adult will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type adjudications will be excluded from consideration.*

II.B.403. *Second, the juvenile adjudications must result from offenses committed after the offender's sixteenth birthday. The Commission chose the date of the offense rather than the date of adjudication to eliminate variability in application based on differing juvenile court practices.*

II.B.404. *Third, juvenile adjudications will be considered in computing the criminal history score only for adult offenders who had not attained the age of 21 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.*

II.B.405. Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile adjudications to equal one point on the criminal history score, and that no offender may receive more than one point on the basis of prior juvenile adjudications. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score. The one point limit was deemed consistent with the purpose for including juvenile record in the criminal history--to distinguish the young adult felon with no juvenile record of felony-type behavior from the young adult offender who has a prior juvenile record of repeated felony-type behavior. The one point limit also was deemed advisable to limit the impact of adjudications obtained under a juvenile court procedure that does not afford the full procedural rights available in adult courts.

II.B.406. Under Laws of 1980, Chapter 580, sec. 16 (amends Minn. Stat. § 260.161, subd. 1), juvenile courts are required to maintain juvenile records until the offender reaches the age of 23, and release those records to requesting adult courts. The adult courts are authorized to use juvenile information to determine a proper sentence.

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.

Comment

II.B.501. Out-of-state convictions include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice.

II.B.502. The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history index score. It was recognized, however, that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. There is no uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor."

II.B.503. It was concluded, therefore, that designation of out-of-state offenses as felonies or lesser offenses, for purposes of the computation of the criminal history index score, must properly be governed by Minnesota law.

II.B.504. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded foreign convictions. In so doing, sentencing courts should consider the nature and definition of the foreign offense, as well as the sentence received by the offender.

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 felony sentence should be stayed. [Rev. Eff. 8/1/81]

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.

Comment

II.C.01. *The guidelines provide sentences which are presumptive with respect to (a) disposition--whether or not the sentence should be executed, and (b) duration--the length of the sentence. For cases below and to the right of the dispositional line, the guidelines create a presumption in favor of execution of the sentence. For cases in cells above and to the left of the dispositional line, the guidelines create a presumption against execution of the sentence.*

II.C.02. *In the cells below and to the right of the dispositional line, the guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months shall be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell of the Sentencing Guidelines Grid is not a departure from the guidelines, and any sentence length given which is outside that range is a departure from the guidelines. In the cells above and to the left of the dispositional line, the guidelines provide a single fixed presumptive sentence length.*

II.C.03. *When a stay of execution is given, the presumptive sentence length shown in the appropriate cell should be pronounced, but its execution stayed. If the sentence length pronounced, but stayed, differs from that shown in the appropriate cell, that is a departure from the guidelines.*

II.C.04. *When a stay of imposition is given, no sentence length is pronounced, and the imposition of the sentence is stayed to some future date. If that sentence is ever imposed, the presumptive sentence length shown in the appropriate cell should be pronounced, and a decision should be made on whether to execute the presumptive*

sentence length given. If the sentence length pronounced at the imposition of the sentence differs from that shown in the appropriate cell of the Sentencing Guidelines Grid, that is a departure from the guidelines.

II.C.05. If an offender is convicted of a felony, and no stayed sentence is given under Minn. Stat. §§ 609.13 through 609.14, and the judge imposes or stays a misdemeanor or gross misdemeanor sentence, that is a departure from the guidelines.

II.C.06. When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.

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.

Comment

II.D.01. The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines, and stay or impose a sentence that is deemed to be more appropriate, reasonable, or equitable than the presumptive sentence.

II.D.02. Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.

II.D.03. The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently.

Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.

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.

Comment

II.D.101. *The Commission believes that sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income levels. The Commission's study of Minnesota sentencing decisions indicated that, unlike many other states, these factors generally were not important in dispositional decisions. Therefore, their exclusion as reasons for departure should not result in a change from current judicial sentencing practices. The only excluded factor which was associated with judicial dispositional decisions was employment at time of sentencing. In addition to its correlation with race and income levels, this factor was excluded because it is manipulable--offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing. While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at time of sentencing.*

II.D.102. *In addition, the Commission determined that the severity of offenders' sanctions should not vary depending on whether or not they exercise constitutional rights during the adjudication process.*

H.D.103. *It follows from the Commission's use of the conviction offense to determine offense severity that departures from the guidelines should not be permitted for elements of alleged offender behavior not within the definition of the offense of conviction. Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.*

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.
- (5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
- (a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or
 - (b) the offense involved an attempted or actual sale or transfer of controlled substances in

- quantities substantially larger than for personal use; or
- (c) the offense involved the manufacture of controlled substances for use by other parties; or
 - (d) the offender knowingly possessed a firearm during the commission of the offense; or
 - (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or
 - (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
 - (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional). [Rev. Eff. 8/1/81]

Comment

II.D.201. The Commission provided a non-exclusive list of reasons which may be used as reasons for departure. The factors are intended to describe specific situations involving a small number of cases. The Commission rejected factors which were general in nature, and which could apply to large numbers of cases, such as intoxication at the time of the offense. The factors cited are illustrative and are not intended to be an exclusive or exhaustive list of factors which may be used as reasons for departure. Some of these factors may be considered in establishing conditions of stayed sentences, even though they may not be used as reasons for departure. For example, whether or not a person is employed at time of sentencing may be an important factor in deciding whether restitution should be used as a condition of probation, or in deciding on the terms of restitution payment.

- 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.

When an offender has been convicted of an offense with a mandatory minimum sentence of five years, the presumptive duration of the prison sentence should be 90 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.

[Rev. Eff. 8/1/81]

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.

Comment

II.E.01. A sentence which is mandatory under state statute becomes the presumptive guideline sentence. The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would receive a presumptive imprisonment sentence. However, it is possible that a few cases might arise in which imprisonment is mandatory under state law but for which the Sentencing Guidelines Grid recommends a stay. If that occurs, the mandatory sentence becomes the presumptive sentence, imprisonment of the offender would not be a departure from the guidelines, and no written reasons are required.

II.E.02. Under Minnesota law, mandatory minimum sentences cannot be diminished by earning good time. Offenders given mandatory minimum three-year sentences for offenses committed on or after May 1, 1980, would not earn good time reductions, and would have no incentive for good behavior in prisons. This could pose serious institutional management problems if it occurred in a significant number of cases. Accordingly, the Commission has established a procedure to set the fixed presumptive sentence length at 90 months for those subject to a mandatory five year minimum, 54 months for those subject to a mandatory three-year minimum and 18 months for those subject to a mandatory one-year minimum, or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. This will provide all inmates with equal incentive for good behavior.

F. Concurrent/Consecutive Sentences: When an offender is convicted of multiple current offenses, or when 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 presumptive disposition for escapes from executed sentences shall be execution of the escape sentence. If the executed escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid. If the executed escape sentence is to be served consecutively to other sentences, the presumptive duration shall be that indicated by the aggregation process set forth below. [Rev. Eff. 10/30/80]

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 incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence. [Rev. Eff. 10/30/80]

Comment

II.F.01. Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. The Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines. The guidelines create a presumption against the use of consecutive sentences in cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.

II.F.02. The guidelines provide that when one judge gives consecutive sentences in cases involving multiple current convictions, sentence durations shall be aggregated into a single fixed presumptive sentence. While statutory and case law are silent on the point, under long-standing practice the service of a consecutive sentence begins when the previous sentence expires or is discharged. Under indeterminate sentencing, the Minnesota Corrections Board had the power to discharge a previous sentence so an inmate could begin serving a consecutive sentence. For consecutive sentences given pursuant to offenses committed on or after May 1, 1980, the Minnesota Corrections Board does not have the power to discharge a sentence. It could be argued that, under past practice, if an offender is given separate consecutive presumptive sentences, the service of the consecutive sentence could begin only when the first sentence expires. This would mean that an offender would serve the term of imprisonment on the first sentence, would be released on supervised release for a period equal to the amount of good time earned on the first sentence (at which point the first sentence would expire), and then would be returned to the institution to begin service of the consecutive sentence. The Commission believes that this result would be incongruous. When one judge is pronouncing sentences on multiple convictions, and one or more is to be served consecutively, the possibility of this result can be avoided by aggregating the durations for the separate sentences into a single fixed presumptive sentence length. Moreover, the Commission recommends that when an offender is charged with multiple offenses within the same judicial district the trials or sentencings be consolidated before one judge, whenever possible. This will allow the judge to perform the aggregation process described in the guidelines if consecutive sentences are given.

However, if multiple trials or sentencings cannot be consolidated before one judge, and if two or more judges give presumptive sentences some of which are given consecutively to others, the Commission believes there are two options available to avoid the possibility of the incongruous interim period of supervised release.

The first option would be for the judge choosing to impose a sentence consecutive to a presumptive sentence given by another judge to pronounce the duration indicated at the zero criminal history column and the appropriate severity level for the current offense, and to specify that the sentence shall commence at the end of the term of imprisonment for the previous guideline sentence. Provided that the sentence for the most severe current offense is pronounced first, the total terms of imprisonment resulting from a second (or subsequent) consecutive sentence will be the same as if one judge were sentencing all convictions. However, under this option, the period of supervised release will be somewhat shorter because the offender technically will be serving the period of supervised release on the first offense at the same time he or she is serving the term of imprisonment on the second offense.

The second option would be for the second or subsequent judge to pronounce the durations indicated in the Sentencing Guidelines Grid at the zero criminal history column for the severity level for the current offense, and to state that this sentence

would be consecutive to the previous presumptive sentence. The Commission believes that it would be appropriate for the institutional records officer to aggregate the separate durations into a single fixed presumptive sentence, as well as to aggregate the terms of imprisonment and the periods of supervised release. For example, if Judge A executed a 44 month fixed presumptive sentence, and Judge B later executes a 24 month fixed presumptive sentence to be served consecutively to the first sentence, the Commission feels the records officer has the authority to aggregate those sentences into a single 68 month fixed presumptive sentence, with a 45.3 month term of imprisonment and a 22.7 month period of supervised release, provided that all good time were earned. The Commission believes that nothing in statutory or case law prevents the records officer from performing this aggregation, and that such aggregation provides an orderly, rational, and equitable method for handling consecutive sentences.

Under this second option, if the most severe current offense is sentenced first, the resulting aggregated sentence lengths would be the same as if one judge had sentenced the offenses consecutively.

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

II.F.03. For cases with a prior felony sentence for a crime against a person, which has neither expired nor been discharged, and a single current conviction for a crime against a person, and when the current conviction is sentenced consecutive to the prior, the service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Minnesota Corrections Board has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons committing new felonies while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Minnesota Corrections Board assigned to the inmate for the offense committed on or before April 30, 1980.

II.F.04. The sentencing guidelines provide that sentences must be stayed or imposed if they are to be used in computing the criminal history score. When multiple convictions are sentenced concurrently, separate sentences arising out of separate behavioral incidents must be stayed or imposed on each conviction if they are to be used in computing future criminal history scores. If an offender is convicted of two offenses arising from separate behavioral incidents, but the judge stayed or imposed a sentence for only one conviction, only one point would accrue to the prior felony sentences item in the computation of a future criminal history score. If the judge stayed or imposed a sentence for each conviction offense in this example, then two points would accrue to the prior felony sentences item in future criminal history score computation.

The phrase "multiple current felony convictions" means two or more cases in which the defendant has been found guilty by verdict or by a finding of the Court following trial, or in which the defendant has entered a plea of guilty, and for which sentences have not been stayed or imposed. Multiple current convictions may occur before one Court or two or more Courts.

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 two, but such sentence shall not be less than one year and one day except that the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. 609.185, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows: [Rev. Eff. 10/30/80]

CRIMINAL HISTORY SCORE

SEVERITY LEVELS OF CONVICTION OFFENSE	0	1	2	3	4	5	6 or more
<i>Conspiracy/Attempted Murder, 1st Degree</i>	70 67-73	84 80-88	97 92-103	122 115-128	146 139-153	170 162-179	194 185-203

Comment

II.G.01. The presumptive sentence length for those convicted of attempted offenses or conspiracies to commit an offense is one-half the duration provided in the appropriate cell of the Sentencing Guidelines Grid for the completed offense, provided that no such sentence shall be less than one year and one day. This provision is consistent with legislative intent and current practice of the Minnesota Corrections Board. The guidelines do not reduce the severity level for attempt or conspiracy offenses. That appears consistent with current judicial practice, because those convicted of attempts and conspiracies were more likely to be imprisoned than those convicted of the completed offenses.

II.G.02. When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.

II.G.03. If the fixed presumptive sentence is an odd number, division by two will produce a presumptive sentence involving a half month. For example, 41 months divided by two equals 20.5 months. In that case, 20.5 months is the presumptive sentence length.

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.

Comment

II.H.01. There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. This will occur in a handful of cases each year, generally involving the offense of Assault in the second degree, for offenders with criminal history scores of six or more. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence length.

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.

Comment

III.A.101. *When the presumptive sentence is a stay, the judge may grant the stay by means of either a stay of imposition or a stay of execution. The use of either a stay of imposition or stay of execution is at the discretion of the judge. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and ought to be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, judges use stays of imposition most frequently for these types of offenders.*

III.A.102. *When a judge grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell of the Sentencing Guidelines Grid, and may be as long as the statutory maximum for the offense of conviction. Thus, for an offender convicted of Theft, \$150-\$2,500 (severity level III), with a criminal history score of 1, the duration of the stay could be up to five years. The 13 month sentence shown in the guidelines is the presumptive sentence length and, if imposed, would be executed if (a) the judge departs from the dispositional recommendation and decides to execute the sentence, or (b) if the stay is later revoked and the judge decides to imprison the offender.*

2. Conditions of Stayed Sentences: The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sen-

tences, 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.

Comment

III.A.201. The judge may attach any conditions to a stayed sentence which are permitted by law and which he or she deems appropriate. The guidelines neither enlarge nor restrict the conditions that judges may attach to a stayed sentence. Laws

1978, Chapter 723 permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop such guidelines during their initial guideline development effort, but has expressed its intention to do so in the future. The Commission has provided some language in the above section of the guidelines which provides general direction in the use of conditions of stayed sentences.

- 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.

Comment

III.B.01. *The language in this section describes current judicial practice. In fiscal year 1978, only about six percent of cases receiving stays of imposition or stays of execution were later revoked and executed for technical violations of the conditions of the stay. The guidelines are based on the concept that the severity of the sanction ought to depend primarily on the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions.*

- 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 when 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), 289 N.W.2d 408 and State ex rel. Ahern v. Young, 273 Minn. 247, 141 N.W.2d 20.

Comment

III.C.01. The Commission recognized that the possibility of revocation and a significant period of state imprisonment provides an incentive for those on probation to obey conditions of the stayed sentence. The intent of the Commission's policy on computing jail credit is to preserve that incentive.

III.C.02. However, the Commission believes that offenders should receive jail credit for time spent in custody between arrest and sentencing. During that time, the defendant is presumed innocent. There is evidence that the poor and members of racial minorities are more likely to be subject to pre-trial detention than others. Granting such jail credit for those receiving executed sentences makes the total periods of incarceration more equitable.

III.C.03. The Commission's policy is that individuals whose sentences are executed should receive jail credit for all time spent in custody between arrest and the time sentence was executed, or the offender was given a stay of imposition or stay of execution. Offenders should not receive jail credit for any time spent in custody as a condition of a stay of imposition or execution, when the stay is later revoked and the sentence executed.

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 or 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 or 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
<i>Unauthorized Use of Motor Vehicle</i> <i>Possession of Marijuana</i> I	12*	12*	12*	15	18	21	24 23-25
<i>Theft Related Crimes (\$150-\$2500)</i> <i>Sale of Marijuana</i> II	12*	12*	14	17	20	23	27 25-29
<i>Theft Crimes (\$150-\$2500)</i> III	12*	13	16	19	22 21-23	27 25-29	32 30-34
<i>Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)</i> IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Simple Robbery</i> V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Assault, 2nd Degree</i> VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i> VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
<i>Assault, 1st Degree</i> <i>Criminal Sexual Conduct, 1st Degree</i> VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
<i>Murder, 3rd Degree</i> IX	97 94-100	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
<i>Murder, 2nd Degree</i> 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

[Rev. Eff. 8/1/81]

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 Criminal Sexual Conduct 1 - 609.342 Intrafamilial Sexual Abuse 1 - 609.3641 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 Burglary - 609.58, subd. 2(1)(b) Criminal Sexual Conduct 2 - 609.343(c), (d), (e), & (f) Criminal Sexual Conduct 3 - 609.344(c) & (d) Fleeing Peace Officer (resulting in death) - 609.487, subd. 4(a) Intrafamilial Sexual Abuse 2 - 609.3642, subd. 1(2) Intrafamilial Sexual Abuse 3 - 609.3643, subd. 1(2) 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(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) Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b) Intrafamilial Sexual Abuse 2 - 609.3642, subd. 1(1) Intrafamilial Sexual Abuse 4 - 609.3644, subd. 1(2) Kidnapping - 609.25, subd. 2(1) Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.53, subd. 1(a) Precious Metal Dealers, Receiving Stolen Goods (all values) - 609.53, subd. 3(a) 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) Intrafamilial Sexual Abuse 3 - 609.3643, subd. 1(1) Manslaughter 2 - 609.205(2), (3), & (4) Perjury - 609.48, subd. 4(1) Possession of Incendiary Device - 299F.80; 299F.815; 299F.811 Receiving Profit Derived from Prostitution - 609.323, subd. 1 Simple Robbery - 609.24 Solicitation of Prostitution - 609.322, subd. 1 Tampering w/Witness - 609.498, subd. 1

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)
Fleeing Peace Officer (substantial bodily harm) - 609.487, subd. 4(c)
Intrafamilial Sexual Abuse 4 - 609.3644, subd. 1(1)
Negligent Fires - 609.576(a)
IV Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4(2)
Precious Metal Dealers, Receiving Stolen Goods (\$150-\$2,500) - 609.53, subd. 1(a)
Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.53, subd. 2(a)
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
Possession of Hallucinogens or PCP - 152.15, subd. 2(2)
Possession of Heroin - 152.15, subd. 2(1)
III Possession of Remaining Schedule I & II Narcotics - 152.15, subd. 2(1)
Possession of Shoplifting Gear - 609.521
Precious Metal Dealers, Receiving Stolen Goods (less than \$150) - 609.53, subd. 1(a)
Precious Metal Dealers, Receiving Stolen Goods (\$150-\$2,500) - 609.53, subd. 2(a)
Prostitution (Patron) - 609.324, subd. 1
Receiving Profit Derived from Prostitution - 609.323, subd. 2
Sale of Cocaine - 152.15, subd. 1(1)
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)
Precious Metal Dealers, Receiving Stolen Goods (less than \$150) - 609.53, subd. 2(a)
Precious Metal Dealers, Regulatory Provisions - 325F.5213
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
Possession of Cocaine - 152.15, subd. 2(1)
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

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)

Theft of Services
609.52, subd. 2(13)

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 Information - Certificate of Title Application
168A.30

False Membership Card
609.63, subd. 1(3)

False Merchandise Stamp
609.63, subd. 1(2)

Fraudulent Statements
609.645

Obtaining Signature By False Pretense
609.635

Offer Forged Writing At Trial
609.63, subd. 2

Use False Identification
609.63, subd. 1(1)

[Rev. Eff. 8/1/81/]

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.

SUMMARY OF MODIFICATIONS TO SENTENCING GUIDELINES

Any changes which have been promulgated by the Commission since the guidelines were adopted on May 1, 1980, have been noted throughout the text of the guidelines with the effective date of the change, and apply to offenses committed on or after the effective date.

The following is a summary of the substantive changes which have been made to the guideline language:

- 1) Addition of an aggravating factor for major controlled substance offenses. [Eff. 8-1-81]
- 2) Addition of new language to provide for a 90 month presumptive prison sentence for offenses requiring a 5 year mandatory minimum sentence.
- 3) Clarification of language in consecutive sentencing policy dealing specifically with convictions for escape from custody, and service of a guideline sentence imposed consecutive to an offense committed on or before April 30, 1980. [Eff. 10-30-80]
- 4) Addition of a separate sentencing grid for Attempt or Conspiracy to Commit Murder 1st Degree. [Eff. 10-30-80]
- 5) Change in the Dispositional Line on the Sentencing Guidelines Grid to include severity level one offenses with criminal history score of six or more. [Eff. 8-1-81]
- 6) The Offense Severity Reference Table was revised to establish rankings for the following new offenses: Intrafamilial Sexual Abuse; Fleeing Peace Officer; Precious Metal Dealers Receiving Stolen Goods and Regulatory Provisions for Precious Metal Dealers. [Eff. 8-1-81]
- 7) The Offense Severity Reference Table was revised to change the severity ranking for Burglary, 609.58, subd. 2(1)(b) and Receiving Profit Derived from Prostitution, 609.323, subd. 1; and to include at severity level three, the offense of Possession of Shoplifting Gear, 609.521, which was previously on the Theft Offense List. [Eff. 8-1-81]
- 8) The Theft Related Offense List was revised to add a new offense of Theft of Services, 609.52, subd. 2(13). [Eff. 8-1-81]
- 9) The Forgery Related Offense List was revised to add the offense of False Information-Certificate of Title Application, 168A.30, which had inadvertently been omitted. [Eff. 8-1-81]

FELONIES

<u>STATUTE</u>	<u>OFFENSE</u>	<u>SEVERITY LEVEL</u>
35.824	Altering Livestock Certificate	1
80A.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation - Over \$2,500	4
80A.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation - Under \$2,500	3
90.41 subd. 1	Bribery - State Appraiser and Scaler	4
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Cocaine	3
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Heroin	6
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Remaining Schedule I & II Narcotics	6
152.09 subd. 1(1) or 152.15 subd. 1(2)	Sale of Hallucinogens or PCP (Angel Dust)	6
152.09 subd. 1(1) or 152.15 subd. 1(2)	Sale of Marijuana/Hashish/Tetrahydrocannabinols	2
152.09 subd. 1(1) or 152.15 subd. 1(2)	Sale of Remaining Schedule I, II, & III Nonnarcotics	3
152.09 subd. 1(1) or 152.15 subd. 1(3)	Sale of a Schedule IV Substance	2
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Cocaine	1
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Heroin	3
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Remaining Schedule I & II Narcotics	3
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Hallucinogens or PCP (Angel Dust)	3
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Marijuana/Hashish/Tetrahydrocannabinols	1
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Remaining I, II, & III Nonnarcotics	1
152.09 subd. 1(2) or 152.15 subd. 2(3)	Possession of Schedule IV Substance	1
152.09 subd. 2(1)(2)(3) or 152.15 subd. 3	Fraudulent Procurement of a Controlled Substance	1

<u>STATUTE</u>	<u>OFFENSE</u>	<u>SEVERITY LEVEL</u>
168A.30	False Information - Certificate of Title Application	1
192.36	Theft by Soldier of Military Goods - Over \$2,500	4
192.36	Theft by Soldier of Military Goods - \$150-\$2,500	3
226.05	Altering Packing House Certificate	1
228.45, 47, 49-51	False Bill of Lading	1
243.55	Bringing Contraband into State Prison	4
256.98	Welfare Fraud - Over \$2,500	3
256.98	Welfare Fraud - \$150-\$2,500	2
290.53 subd. 4	Perjury - Tax Evasion	4
299F.80 all sections	Possession of Explosives Without Permit	5
299F.811	Possession of Explosives for Crime	5
299F.815 all sections	Possession of Chemical Igniting Device/Molotov Cocktail	5
299F.83	Negligent Discharge of Explosive	3
300.60	Diversion of Corporate Property - Over \$2,500	4
300.50	Diversion of Corporate Property - \$150-\$2,500	3
306.61	False Statement by Corporate Officer	4
325F.5213	Precious Metal Dealers, Regulatory Provisions	2
340.70	Selling Liquor	1
609.19	Murder in the Second Degree	10
609.195 all sections	Murder in the Third Degree	9
609.20(1)(2)	Manslaughter in the First Degree	8
609.20(3)	Manslaughter in the First Degree	7
609.205(1)	Manslaughter in the Second Degree - Culpable Negligence	7
609.205(2)(3)(4)	Manslaughter in the Second Degree - Hunting Accident	5
609.21	Criminal Negligence Resulting in Death	5
609.221	Assault in the First Degree - Great Bodily Harm	8
609.222	Assault in the Second Degree - Dangerous Weapon	6
609.223	Assault in the Third Degree - Substantial Bodily Harm	4
609.235	Use of Drugs to Injure or Facilitate Crime	4
609.24	Simple Robbery	5
609.245	Aggravated Robbery	7
609.25 subd. 2(1)	Kidnapping - Safe Release/No Great Bodily Harm	6
609.25 subd 2(2)	Kidnapping - Great Bodily Harm <u>OR</u>	8
609.25 subd. 2(2)	Kidnapping - Unsafe Release	7
609.255	False Imprisonment	3
609.27 all sections	Coercion - Prop. Value over \$2,500/Threat Bodily Harm	3

<u>STATUTE</u>	<u>OFFENSE</u>	<u>SEVERITY LEVEL</u>
609.27 subd. 1(2)(3)(4)(5)	Coercion - Prop. Value \$300-\$2,500	2
609.31	Leaving the State to Evade Establishment of Paternity	1
609.322 subd. 1 all sections	Solicitation of Prostitution	5
609.322 subd. 2 all sections	Solicitation of Prostitution	3
609.322 subd. 3 all sections	Solicitation of Prostitution	1
609.323 subd. 1	Receiving Profit Derived from Prostitution	5
609.323 subd. 2	Receiving Profit Derived from Prostitution	3
609.324 subd. 1 all sections	Prostitution (Patron)	3
609.342 all sections	Criminal Sexual Conduct in the First Degree	8
609.343(a)(b)	Criminal Sexual Conduct in the Second Degree	6
609.343(c)(d)(e)(f)	Criminal Sexual Conduct in the Second Degree	7
609.344(b)	Criminal Sexual Conduct in the Third Degree	5
609.344(c)(d)	Criminal Sexual Conduct in the Third Degree	7
609.345(b)	Criminal Sexual Conduct in the Fourth Degree	4
609.345(c)(d)	Criminal Sexual Conduct in the Fourth Degree	6
609.3641	Intrafamilial Sexual Abuse 1	8
609.3642 subd. 1(1)	Intrafamilial Sexual Abuse 2	6
609.3642 subd. 1(2)	Intrafamilial Sexual Abuse 2	7
609.3643 subd. 1(1)	Intrafamilial Sexual Abuse 3	5
609.3643 subd. 1(2)	Intrafamilial Sexual Abuse 3	7
609.3644 subd. 1(1)	Intrafamilial Sexual Abuse 4	4
609.3644 subd. 1(2)	Intrafamilial Sexual Abuse 4	6
609.375 subd. 2; subd. 3; subd. 4	Nonsupport of Wife or Child	1
609.42 subd. 1 all sections	Bribery	4
609.445	Failure to Pay Over State Funds - Over \$2,500	4
609.445	Failure to Pay Over State Funds - \$150-\$2,500	3
609.455	Permitting False Claims Against Government - Over \$2,500	4
609.455	Permitting False Claims Against Government - \$150-\$2,500	3
609.465	Presenting False Claims to Public Officer or Body-Over \$2,500	3
609.465	Presenting False Claims to Public Officer or Body-\$150-\$2,500	2
609.466	Medical Assistance Fraud - Over \$2,500	3
609.466	Medical Assistance Fraud - \$150-\$2,500	2
609.48 subd. 1; subd. 2; subd. 3; subd. 4(1)	Perjury - Felony Trial	5
609.48 subd. 1; subd. 2; subd. 3; subd. 4(2)	Perjury - Other Trial	4

<u>STATUTE</u>	<u>OFFENSE</u>	<u>SEVERITY LEVEL</u>
609.485 all sections except subd. 4(4)	Escape	3
609.485 subd. 4(4)	Escape with Violence	6
609.487 subd. 4(a)	Fleeing Peace Officer (resulting in death)	7
609.487 subd. 4(b)	Fleeing Peace Officer (great bodily harm)	6
609.487 subd. 4(c)	Fleeing Peace Officer (substantial bodily harm)	4
609.495 all sections	Aiding an Offender to Avoid Arrest	1
609.498 subd. 1	Tampering with a Witness	5
609.52 all sections	Theft of Public Funds - Over \$2,500	4
609.52 all sections	Theft of Public Funds - \$150-\$2,500	3
609.52 all sections	Theft from Person	4
609.52 all sections	Theft of Public Records	3
609.52 all sections	Theft - Looting	2
609.52 subd. 2(1)(4)(8)(10)(11)	Theft Crimes - Over \$2,500	4
609.52 subd. 2(1)(4)(8)(10)(11)	Theft Crimes - \$150-\$2,500	3
609.52 subd. 2(2)(3)(5)(6)(9); (12)(i)(ii)(13)	Theft Related Crimes - Over \$2,500	3
609.52 subd. 2(2)(3)(5)(6)(9); (12)(i)(ii)(13)	Theft Related Crimes - \$150-\$2,500	2
609.521	Possession of Shoplifting Gear	3
609.525 all sections	Bringing Stolen Goods into State - Over \$2,500	6
609.525 all sections	Bringing Stolen Goods into State - \$150-\$2,500	4
609.53 all sections	Receiving Stolen Goods - Over \$2,500	6
609.53 all sections	Receiving Stolen Goods - \$150-\$2,500	4
609.53 subd. 1(a)	Precious Metal Dealers (over \$2,500 - known to be stolen)	6
609.53 subd. 3(a)	Precious Metal Dealers (all values - second or subsequent)	6
609.53 subd. 1(a)	Precious Metal Dealers (\$150-\$2,500 - known to be stolen)	4
609.53 subd. 2(a)	Precious Metal Dealers (over \$2,500 - reason to believe stolen)	4
609.53 subd. 1(a)	Precious Metal Dealers (less than \$150 - known to be stolen)	3
609.53 subd. 2(a)	Precious Metal Dealers (\$150-\$2,500 - reason to be stolen)	3
609.53 subd. 2(a)	Precious Metal Dealers (less than \$150 - reason to believe stolen)	2
609.54 all sections	Embezzlement of Public Funds - Over \$2,500	4
609.54 all sections	Embezzlement of Public Funds - \$150-\$2,500	3
609.55 all sections	Unauthorized Use of a Motor Vehicle	1

<u>STATUTE</u>	<u>OFFENSE</u>	<u>SEVERITY LEVEL</u>
609.551 all sections	Rustling of Livestock - Over \$2,500	4
609.551 all sections	Rustling of Livestock - \$150-\$2,500	3
609.561 all sections	Arson in the First Degree	7
609.562	Arson in the Second Degree	6
609.563 all sections	Arson in the Third Degree	3
609.576(a)	Negligent Arson - Great Bodily Harm	4
609.576(b)(4)	Negligent Arson - Damage Exceeds \$10,000	2
609.58 subd. 2(1)(b)	Burglary of Occupied Dwelling w/Weapon or Assault	7
609.58 Subd. 2(2)	Burglary of Occupied Dwelling	6A
609.58 subd. 2(1)(a)(c); (3)	Burglary Unoccupied Dwelling/Tool/Bank	<u>4</u>
609.59	Possession of Burglary Tools	3
609.595 subd. 1(1)	Damage to Property - Risk Bodily Harm	3
609.595 subd. 1(2)(3)	Damage to Property - Over \$300/Public Utility	2
609.60 all sections	Dangerous Trespasses and Other Acts	3
609.611 all sections	Defrauding Insurer - Over \$2,500	3
609.611 all sections	Defrauding Insurer - \$150-\$2,500	2
609.615 all sections	Defeating Security on Realty - Over \$2,500	3
609.615 all sections	Defeating Security on Realty - \$150-\$2,500	2
609.62 all sections	Defeating Security on Personality - Over \$2,500	3
609.62 all sections	Defeating Security on Personality - \$150-\$2,500	2
609.625 subds 1(1); 2; 3	Aggravated Forgery - Over \$2,500	3
609.625 subds. 1(1); 2; 3	Aggravated Forgery - \$150-\$2,500	2
609.625 subds. 1(1); 2; 3	Aggravated Forgery - Less than \$150	1
609.625 subd. 1(2)(3)(4)(5)(6)(7); subd. 2; subd. 3	Aggravated Forgery - Non-check	2
609.63 all sections	Simple Forgery	1
609.635	Obtaining Signature by False Pretense	2
604.64	Recording, Filing of Forged Instrument	2
609.645	Fraudulent Statements	1
609.65	False Certification by Notary Public	1
609.67 subd. 2	Possession/Ownership of Machine and Short-Barreled Shotguns	3
609.71	Riot	2
609.713 subd. 1	Terroristic Threats - Violence Threat/Evacuation	4
609.713 subd. 2	Terroristic Threats - Bomb Threat	2
609.785 all sections	Fraudulent Long Distance Telephone Calls - Over \$2,500	3
609.785 all sections	Fraudulent Long Distance Telephone Calls - \$150-\$2,500	2
609.82 all sections	Fraud in Obtaining Credit - Over \$2,500.	3

STATUTE

609.82 all sections
609.85 subd. 1
624.713 subd. 1(b)
641.165 subd. 2(b)

OFFENSE

Fraud in Obtaining Credit - \$150-\$2,500
Crimes Against Railroad Employees
Certain Persons Not to Have Pistols - Felons
Bring Dangerous Weapon into County Jail

SEVERITY
LEVEL

2
3
3
4

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

STATE OF MINNESOTA

IN SUPREME COURT

O R D E R

IT IS HEREBY ORDERED that, effective May 1, 1980, the following procedures shall apply to the appeal, pursuant to Minn. Stat. § 244.11 (1980), of any sentence imposed or stayed by the district court according to the Rules of Criminal Procedure:

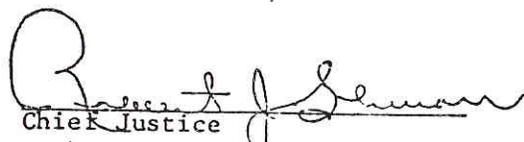
1. Any party appealing a sentence shall file with the clerk of the district court, within 90 days after entry of judgment, (a) a notice of appeal, (b) 12 copies of an informal letter brief setting forth the arguments concerning the illegality or inappropriateness of the sentence, and (c) an affidavit of service of the notice and a copy of the brief upon opposing counsel and upon the Attorney General. (A defendant appealing the sentence and the judgment of conviction has the option of combining the two appeals into a single appeal; when this option is selected the procedures established by R. 29.02, Rules of Criminal Procedure, shall continue to apply.)

2. The clerk of the district court shall not accept a notice of appeal from sentence unless accompanied by the requisite briefs and affidavit of service. Upon the filing of the requisite papers, the clerk shall immediately forward to the clerk of the Supreme Court (a) a certified copy of the notice of appeal along with the briefs and affidavit filed by the appellant, (b) a transcript of the sentencing hearing and any written explanation of sentence by the trial court which is not already included in the transcript, and (c) the presentence investigation report.

3. Within 10 days of service upon it of the copy of the notice of appeal and appellant's brief, respondent, if it wishes to respond, shall serve its brief upon appellant and file with the clerk of the Supreme Court 12 copies of its brief.

Dated: 2/28/80

BY THE COURT:


Chief Justice