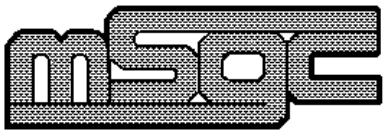
Minnesota Sentencing Guidelines Commission



MINNESOTA SENTENCING GUIDELINES and COMMENTARY

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TABLE OF CONTENTS

			Page
I.	Statement of Purpose and Principles		1
II.	Determining Presumptive Sentences		2
	A.	Offense Severity	2
	B.	Criminal History	5
	C.	Presumptive Sentence	19
	D.	Departures from the Guidelines	23
	E.	Mandatory Sentences	31
	F.	Concurrent/Consecutive Sentences	34
	G.	Convictions for Attempts, Conspiracies and Other Sentence Modifiers	39
	H.	Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence	41
III.	Related Policies		42
	A.	Establishing Conditions of Stayed Sentences	42
	B.	Revocation of Stayed Sentences	44
	C.	Jail Credit	45
	D.	Certified Juveniles	47
	E.	Presentence Mental and Physical Examinations for Sex Offenders	47
	F.	Modifications	47
IV.	Sentencing Guidelines Grid		48
V.	Offense Severity Reference Table		50
	-	Theft Offense List	56
	-	Forgery Related Offense List	59
	-	Misdemeanor and Gross Misdemeanor Offense List	60

APPENDIX

Definition of Terms	62
Numerical Reference of Felony Statutes	64
Index	81

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. For persons convicted under Minn. Stat. § 609.229, subd. 3 (a) - Crime Committed for Benefit of a Gang, the severity level is the same as that for the underlying crime with the highest severity level.

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

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, the date of the offense might determine whether a custody status point should be given, and the date of offense determines the order of sentencing with multiple convictions. For those convicted of a single offense, there is generally no problem in determining the date of the offense. For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply:*

a. 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 conviction offense.

b. *If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the earliest offense should be used as the date of the conviction offense.*

If the date of the offense is not specified in the complaint and cannot be ascertained with certainty, the judge shall establish the relative order of events, based on the information available, to determine whether or not the juvenile record is to be considered, whether or not a custody status point is to be assigned, and the order of sentencing.

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. *Accomplice after the fact - 609.495, subd. 3*
3. *Adulteration - 609.687, subd. 3 (3)*
4. *Aiding suicide - 609.215*
5. *Altering engrossed bill - 3.191*
6. *Anhydrous ammonia (tamper/theft/transport) - 18D.331, subd. 5*
7. *Animal fighting - 343.31*
8. *Assaulting or harming a police horse - 609.597, subd. 3 (1) & (2)*
9. *Bigamy - 609.355*
10. *Cigarette tax and regulation violations - 297F.20*
11. *Collusive bidding/price fixing - 325D.53, subds.1(3), 2 & 3*
12. *Concealing criminal proceeds; engaging in business - 609.496; 609.497*
13. *Controlled substance crime, third degree (aggregated offenses) – 152.023*
14. *Corrupting legislator - 609.425*
15. *Criminal sexual conduct, third degree - 609.344, subd. 1(a)*
    (By definition the perpetrator must be a juvenile.)
16. *Criminal sexual conduct, fourth degree - 609.345, subd. 1(a)*
    (By definition the perpetrator must be a juvenile.)
17. *Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines – 609.594*
18. *Failure to Report - 626.556, subd. 6*
19. *Falsely impersonating another - 609.83*
20. *Female genital mutilation - 609.2245*
21. *Forced execution of a declaration - 145B.105*
22. *Gambling acts (cheating, certain devices prohibited; counterfeit chips; manufacture, sale, modification of devices; instruction) - 609.76, subd. 3,4,5,6, & 7*
23. *Hazardous wastes - 609.671*
24. *Horse racing-prohibited act - 240.25*
25. *Incest - 609.365*
26. *Insurance Fraud – Employment of Runners – 609.612*
27. *Interstate compact violation - 243.161*
28. *Issuing a receipt for goods one does not have – 227.50*
29. *Issuing a second receipt without "duplicate" on it – 227.52*
30. *Killing or harming a public safety dog - 609.596, subd. 1*
31. *Lawful gambling fraud - 609.763*
32. *Metal penetrating bullets - 624.74*
33. *Misprision of treason - 609.39*
34. *Motor vehicle excise tax - 297B.10*
35. *Obscene materials; distribution - 617.241, subd. 4*

36. *Obstructing military forces - 609.395*
37. *Pipeline safety - 299J.07, subd. 2*
38. *Police radios during commission of crime - 609.856*
39. *Possession of Pictorial Representations of Minors – 617.247*
40. *Racketeering, criminal penalties (RICO) - 609.904*
41. *Real and Simulated Weapons of Mass Destruction – 609.712*
42. *Refusal to assist - 6.53*
43. *Registration of predatory offenders – 243.166, subd. 5*
44. *Sale of membership camping contracts – 82A.03; 82A.13; 82A.25*
45. *Service animal providing service – 343.21, subd. 9(e)(g)*
46. *State lottery fraud - 609.651, subd. 1 with 4(b) and subd. 2 & 3*
47. *Subdivided land fraud - 83.43*
48. *Torture or cruelty to pet or companion animal – 343.21, subd. 9(c)(d)(f)(h)*
49. *Treason - 609.385*
50. *Unauthorized computer access - 609.891*
51. *Unlawful Transfer of Sounds; Sales - 325E.201*
52. *Use of Minors in Sexual Performance Prohibited - 617.246*
53. *Warning subject of investigation - 609.4971*
54. *Warning subject of surveillance or search - 609.4975*
55. *Wire communications violations - 626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)*

II.A.04. *Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes. 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 18) 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 or because the underlying conduct included in the offense covers such a wide range of severity. When 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. Judges should specify on the record the reasons a particular severity level was assigned. Factors which a judge may consider when assigning a severity level to an unranked offense include but are not limited to: 1) the gravity of the specific conduct underlying the unranked offense; 2) the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense; 3) the conduct of and severity level assigned to other offenders for the same unranked offense; and 4) the severity level assigned to other offenders engaged in similar conduct. 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.*

II.A.06. *When felony offenses are inadvertently omitted from the sentencing guidelines, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. A felony offense is inadvertently omitted when the offense appears neither in the Offense Severity Reference Table nor in the list of offenses in II.A.03. which are excluded from the Offense Severity Reference Table.*

II.A.07. *There are two theft offenses involving a motor vehicle that are ranked individually on the Offense Severity Reference Table. For Theft of a Motor Vehicle, ranked at severity level IV, the offender must be convicted under the general theft statute, Minn. Stat. § 609.52, subd. 2 (1), and the offense must involve theft of a motor vehicle, in order for severity level IV to be the appropriate severity level ranking. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Minn. Stat. § 609.52, subd. 2 (17), the appropriate severity level is III, regardless of whether the sentencing provision that is cited is Minn. Stat. § 609.52, subd. 3 (3) (d) (v).*

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

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 is the primary factor, and criminal history is 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 provide uniform standards for the inclusion and weighting of criminal history information. The sentencing hearing provides a process to assure the accuracy of the information in individual cases. 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.*

II.B.04. *Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

If a fine was given that was less than the misdemeanor level of fine classified by the laws in effect at the time the offense was committed, and that was 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.

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

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

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

        Severity Level I - II = ½ point;
        Severity Level III - V = 1 point;
        Severity Level VI - VIII = 1 ½ points;
        Severity Level IX - XI = 2 points; and
        Murder 1st Degree = 2 points.

        The severity level to be used in assigning weights to prior offenses shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense.

    b. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. § 609.585 or 609.251, only the offense at the highest severity level is considered;

    c. Only the two offenses at the highest severity levels are considered for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;

d. 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;

e. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.

Comment

II.B.101. *The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given for a felony level offense, no matter what period of probation is pronounced, before the current sentencing. Prior felony convictions for an attempt or conspiracy for which a felony sentence was stayed or imposed before the current sentencing are weighted the same as completed offenses. The felony point total is the sum of these weights. No partial points are given -- thus, a person with less than a full point is not given that point. For example, an offender with a total weight of 2 ½ would have 2 felony points.*

The Commission determined that it was important to establish a weighting scheme for prior felony sentences to assure a greater degree of proportionality in the current sentencing. Offenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses.

The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements.

For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity level III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III.

Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of controlled substance involved in the conviction. For prior Minnesota controlled substance crimes committed before August 1, 1989, and all prior foreign controlled substance convictions, the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony

sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, only the offense at the highest severity level should be considered. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same judge, sentencing shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in II.A.02.

When the judge determines that permissive consecutive sentences will be imposed or determines that a departure regarding consecutive sentences will be imposed, the procedure in section II.F. shall be followed in determining the appropriate sentence duration under the guidelines.

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 another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony, or a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. 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 Minn. Stats. § 609.585 or 609.251 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, when single victims are involved.*

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. § 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

II.B.103. *To limit the impact of past variability in prosecutorial discretion, the Commission decided that for prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses. 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 limited consideration to the two most severe offenses 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.

This limit in calculating criminal history when there are multiple felony sentences arising out of a single course of conduct with multiple victims also applies when such sentences are imposed on the same day.

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 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. *The decision to stay execution of sentence rather than to stay imposition of sentence as a means to a probationary term following a felony conviction is discretionary with the judge. Considerable disparity appears to exist in the use of these options. In the case of two similar offenders it is not uncommon for one to receive a stay of execution and another to receive the benefit of a stay of imposition. There is also geographical disparity with stays of imposition much less common in Ramsey County, for example, than in most other counties. As a result of the disparity that exists in the use of stays of imposition, the Commission determined that stays of execution and stays of imposition shall be treated the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.*

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 and stays of imposition, but also the age of the sentences and stays of imposition. 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-five year period. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition would not be counted in criminal history score computation if fifteen years had elapsed from the date of discharge or expiration of that sentence or stay of imposition to the date of the current offense. While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application.*

II.B.107. *A felony sentence imposed for a criminal conviction treated pursuant to Minn. Stat. Ch. 242 (Youth Conservation Commission and later Youth Corrections Board, repealed 1977) shall be assigned its appropriate weight in computing the criminal history score according to procedures in II.B.1.*

II.B.108. *An offense upon which a judgment of guilty has not been entered before the current sentencing; i.e., pursuant to Minn. Stat. § 152.18, subd. 1, shall not be assigned any weight in computing the criminal history score.*

II.B.109. *Under Minn. Stat. § 260B.130, a child alleged to have committed a felony offense under certain circumstances may be prosecuted as an extended jurisdiction juvenile. If the prosecution results in a guilty plea or finding of guilt and the court imposes a disposition according to Minn. Stat. § 260B.130, subd. 4 (a), the extended jurisdiction juvenile conviction*

shall be treated in the same manner as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under sections II.B.1. a - e and corresponding commentary apply to extended jurisdiction juvenile convictions. If the extended jurisdiction juvenile conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.

2. One point is assigned if the offender:

   a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction;
   b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or
   c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction.

   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 and was not on probation or supervised release status for an extended jurisdiction juvenile conviction.

   An additional three months shall be added to the duration of the appropriate cell time which then becomes the presumptive duration when:

   a. a custody status point is assigned; and

   b. the criminal history points that accrue to the offender without the addition of the custody status point places the offender in the far right hand column of the Sentencing Guidelines Grid.

Comment

II.B.201. *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: 1) probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following a felony, gross misdemeanor, or an extended jurisdiction juvenile conviction; 2) 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; or 3) if the current offense occurred within the period of the initial length of stay pronounced by the sentencing judge for a felony, gross misdemeanor, or extended jurisdiction juvenile conviction. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. 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. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and 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.*

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

II.B.203. *The most problematic consequence of a criminal history score in excess of the maximum points differentiated by the Sentencing Guidelines Grid is that no additional penalty accrues for engaging in felonious behavior while under custody supervision. For example, if an offender has a criminal history score of seven and is released pending sentencing for a severity level three offense, and he or she commits another severity level three offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. There is a presumption against consecutive sentences for property offenses, and therefore no additional penalty is provided when this type of situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above that displayed by the Sentencing Guidelines Grid is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current offense of conviction. Criminal history is of secondary importance and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grid and with the special provision for maintaining the impact of the custody status provision. Further differentiation is deemed unnecessary to achieve proportionality in sentencing.

II.B.204. *When three months is added to the cell duration as a result of the custody status provision, the lower and upper durations of the sentence range in the appropriate cell are also increased by three months.*

II.B.205. *When the conviction offense is an attempt or conspiracy under Minn. Stats. § 609.17 or 609.175 and three months is added to the cell duration as a result of the custody status provision, the following procedure shall be used in determining the presumptive duration for the offense. First, three months is added to the appropriate cell duration for the completed offense, which becomes the presumptive duration for the completed offense. The presumptive duration for the completed offense is then divided by two which is the presumptive duration for those convicted of attempted offenses or conspiracies. No such presumptive sentence, however, shall be less than one year and one day.*

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

    a. Only convictions of statutory misdemeanors and gross misdemeanors listed in the Misdemeanor and Gross Misdemeanor Offense List (see Section V.) shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, no offender shall be assigned more than one unit.

c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

II.B.301. *The Commission established a measurement procedure based on units for misdemeanor and gross misdemeanor sentences which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors and gross misdemeanors are assigned one unit. An offender must have a total of four units to receive one point on the criminal history score. No partial points are given--thus, a person with three units is assigned no point value.*

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

The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.

The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in II.B.1.).

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 because 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 particularly relevant misdemeanors under existing state statute. The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s). Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines.

The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI misdemeanor units. If there are less than four units, add in any DWI units. Four or more units would equal one point. Only DWI units can be used in calculating additional points. Each set of four DWI units would equal an additional point. For example, if an offender had two theft units and six DWI units, the theft would be added to the two DWI units to equal one point. The remaining four DWI units would equal a second point. In a second example, if an offender had six theft units and six DWI units, the first four theft units would equal one point. Four of the DWI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI units for a third point. The total misdemeanor score would be two.

The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also 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. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

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 one-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. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less*

problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.

II.B.305. *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.*

II.B.306. *Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2 (1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.*

II.B.307. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.*

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that are felonies under Minnesota law, provided that:

    a. Findings were made by the juvenile court pursuant to an admission in court or after trial;

    b. Each offense represented a separate behavioral incident or involved separate victims in a single behavioral incident;

    c. The juvenile offenses occurred after the offender's fourteenth birthday;

    d. The offender had not attained the age of twenty-five at the time the felony was committed for which he or she is being currently sentenced; and

e. Generally, an offender may receive only one point for offenses committed and prosecuted as a juvenile. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would presume imprisonment. The presumptive disposition of the juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment. This determination is made regardless of the criminal history score and includes those offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section II.C. Presumptive Sentence.

Comment

II.B.401. *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 originally decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

Effective January 1, 1995, the legislature enacted many substantive changes to the juvenile justice system. Included in these changes are the right to effective assistance of counsel in connection with a proceeding in juvenile court and the right to a jury trial on the issue of guilt for a child who is prosecuted as an extended jurisdiction juvenile. Because these rights are now afforded to juveniles, the standards regulating the consideration of juvenile records in computing the criminal history score are broadened.

II.B.402. *First, only juvenile offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. Consistent with Minn. Stat. § 609.035 which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.*

II.B.403. *Second, the juvenile offenses must have been committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date the findings were made by the court to eliminate variability in application based on differing juvenile court practices.*

II.B.404. *Third, juvenile offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 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 offenses to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile offenses. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any mandatory minimum laws that apply to the offense or any other applicable policies under section II.C. Presumptive Sentence. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile offenses are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score.*

II.B.406. *Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of more than one. The Commission was concerned with possible past disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to give proper notice that in the future, the juvenile history can result in more than one criminal history point.*

II.B.407. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved and when the findings involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with a finding for purposes of computing criminal history. When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.*

5. 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, or convictions under the law of other nations.*

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." Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

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. The exception to this would be Federal felony crimes for which there is no comparable Minnesota felony offense. Sentences given for these crimes that are felony level sentences according to Minnesota law shall be given a weight of one point for purposes of calculating the criminal history score.*

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.*

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

Comment

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

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

7. 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.

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

Pursuant to M.S. § 609.342, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. Sentencing a person in a manner other than that described in M.S. § 609.342, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

Pursuant to M.S. § 609.343, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the Second Degree, 609.343 subd. 1 clauses (c), (d), (e), (f), and (h), is an executed sentence of at least 90 months. Sentencing a person in a manner other than that described in M.S. § 609.343, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

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

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

regarding previous dispositions under section 152.18 applies only if the previous dispositions occurred on or after August 1, 1999.

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

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

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells above the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge pursuant to Minn. Stat. § 244.10, subd. 2, and section D of these guidelines.

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 above and to the right of the dispositional line, the guidelines create a presumption in favor of execution of the sentence. For cases in cells below and to the left of the dispositional line, the guidelines create a presumption against execution of the sentence, unless the conviction offense carries a mandatory minimum sentence.*

The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for most property offenders. The Commission believes that a rational sentencing policy requires such trade-offs, to ensure the availability of correctional resources for the most serious offenders. For the first year of guidelines operation, that policy was reflected in sentencing practices. However, by the third year of guideline operation, the percentage of offenders with criminal history scores of four or more had increased greatly, resulting in a significant increase in imprisonment for property offenses. Given finite resources, increased use of imprisonment for property offenses results in reduced prison resources for person offenses. The allocation of scarce resources has been monitored and evaluated on an ongoing basis by the Commission. The Commission has determined that assigning particular weights to prior felony sentences in computing the criminal history score will address this problem. The significance of low severity level prior felonies is reduced, which should result in a lower imprisonment rate for property

offenders. The significance of more serious prior felonies is increased, which should result in increased prison sentences for repeat serious person offenders.

II.C.02. *In the cells above 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 below and to the left of the dispositional line, the guidelines provide a single fixed presumptive sentence length.*

The presumptive duration listed on the grid, when executed, includes both the term of imprisonment and the period of supervised release. According to M.S. § 244.101, when the court sentences an offender to an executed sentence for an offense occurring on or after August 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence. A separate table following the Sentencing Guidelines Grid illustrates how executed sentences are broken down into their two components.

The Commissioner of Corrections may extend the amount of time an offender actually serves in prison if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

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.*

II.C.07. *The term "sale" as it relates to presumptive imprisonment for second or subsequent sale of a severity level VI drug or sale of cocaine encompasses all elements of Minn. Stat. § 152.09 subd. 1 (1) which reads "Manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance" or Minn Stat. § 152.01, subd. 15a which reads " 'Sell' means*

to sell, give away, barter, deliver, exchange, distribute or dispose of to another; or to offer or agree to do the same; or to manufacture", if the offense was committed after August 1, 1989.

II.C.08. *When an offender has been convicted of M.S. § 609.342, the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.342, subdivision 2, whichever is longer. According to M.S. § 609.342, subd. 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.*

II.C.09. *When an offender has been convicted of M.S. § 609.343* subd. 1 clauses (c), (d), (e), (f), or (h)*, the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.343, subdivision 2, whichever is longer. According to M.S. § 609.343, subd. 2, the presumptive sentence for a conviction of these clauses of Criminal Sexual Conduct in the Second Degree is an executed sentence of at least 90 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.*

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 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, the court should pronounce a sentence which is proportional to the severity of the offense of conviction and the extent of the offender's prior criminal history, and should take into substantial consideration the statement of purpose and principles in Section I, above. 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.

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.*

II.D.04. *Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the sentencing guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to provide for informed policy making or to ensure consistency, proportionality, and rationality in sentencing.*

Departures and their reasons highlight both the success and problems of the existing sentencing guidelines. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain the reasons the negotiation was accepted.

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. Employment is excluded as a reason for departure not only because of its correlation with race and income levels, but also because this factor 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. The use of the factors "amenable to probation (or treatment)" or "unamenable to probation" to justify a dispositional departure, could be closely related to social and economic factors. The use of these factors, alone, to explain the reason for departure is insufficient and the trial court shall demonstrate that the departure is not based on any of the excluded factors.*

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.*

II.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) The offender's presumptive sentence is a commitment to the commissioner but not a mandatory minimum sentence, and either of the following exist:

(a) The current conviction offense is at severity level I or II and the offender received all of his or her prior felony sentences during less than three separate court appearances; or

(b) The current conviction offense is at severity level III or IV and the offender received all of his or her prior felony sentences during one court appearance.

(5) 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 a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise 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).

(6) The offender committed, for hire, a crime against the person.

(7) Offender is a "patterned sex offender" (See Minn. Stat. § 609.108).

(8) Offender is a “dangerous offender who commits a third violent crime” (See Minn. Stat. § 609.1095, subd. 2).

(9) Offender is a “career offender” (See Minn. Stat. § 609.1095, subd. 4).

(10) The offender committed the crime as part of a group of three or more persons who all actively participated in the crime.

(11) The offender intentionally selects the victim or the property against which the offense is committed, in whole or in part, because of the victim’s, the property owner’s or another’s actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.

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.*

II.D.202. *The Commission recognizes that the criminal history score does not differentiate between the crime spree offender who has been convicted of several offenses but has not been previously sanctioned by the criminal justice system and the repeat offender who continues to commit new crimes despite receiving previous consequences from the criminal justice system. The Commission believes the nonviolent crime spree offender should perhaps be sanctioned in the community at least once or twice before a prison sentence is appropriate. At this time, the Commission believes that the judge is best able to distinguish these offenders and can depart from the guidelines accordingly.*

II.D.203. *An aggravated sentence would be appropriate when the current conviction is for a Criminal Sexual Conduct offense or for an offense in which the victim was injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or for an offense in which the victim was injured even if the prior felony offense had decayed in accordance with section II.B.1.d.*

II.D.204. *Special sentencing provisions were established by the legislature under Minn. Stat. § 609.108; 609.1095, subd. 2; and 609.1095, subd. 4, that are available to judges when sentencing certain sex offenders, "dangerous offenders," and "career offenders." The use of one of these sentencing provisions would constitute a departure under the sentencing guidelines and a judge must provide written reasons that specify that the requirements of the statute have been met.*

II.D.205. *The aggravating factor involving groups of three or more persons under section II.D.2.b. (8) cannot be used when an offender has been convicted under Minn. Stat. § 609.229, Crime Committed for Benefit of a Gang. See Section G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers for the presumptive sentence for persons convicted of Crime Committed for Benefit of a Gang, Minn. Stat. § 609.229, subd. 3 (a).*

II.D.206. *The aggravating factor involving bias motivation under section II.D.2.b.(9) cannot be used when a person has been convicted under a statute that elevated the crime to a felony offense because of bias motivation, e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault), 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(1) (harassment/stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

Additionally, in determining when domestic violence, sexual assault and sexual abuse cases are motivated by a victim's sex and may be appropriately enhanced, proof must be shown of at least one factor, such as: Offender makes abusive or derogatory references based on gender; offender states hatred for a gender as a class; crime involves excessive violence, including mutilation; or victims are multiple and all of the same gender.

E. Mandatory Sentences: When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment to the Commissioner of Corrections. The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute or the duration of the prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

First degree murder, and certain sex offenders convicted under Minn. Stat. § 609.109, subd. 3, which have a mandatory life imprisonment sentence, are excluded from offenses covered by the sentencing guidelines.

When an offender is sentenced according to Minn. Stat. § 609.107, Mandatory Penalty for Certain Murderers, the statutory provision determines the presumptive sentence.

When an offender has been convicted of an offense with a mandatory minimum sentence under Minn. Stat. § 609.11, which would otherwise be a presumptive stayed sentence under the sentencing guidelines, the court on its own motion or on the motion of the prosecutor may sentence without regard to the mandatory minimum sentence. The presumptive disposition, however, is commitment to the commissioner. A stay of imposition or execution of sentence, while provided for under Minn. Stat. § 609.11, subd. 8, constitutes a departure from the presumptive sentence and the judge must provide written reasons which specify the substantial and compelling nature of the circumstances.

When an offender is sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum sentence for dangerous weapon involvement plus the mandatory minimum sentence for the second or subsequent controlled substance offense or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

When an offender is sentenced according to Minn. Stat. § 609.1095, subd. 3, the presumptive disposition is commitment to the commissioner and the court must impose and execute the presumptive duration unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure.

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

after the person has been released from prison the commissioner shall place the person on conditional release for five years.

Comment

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

II.E.02. *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall above the dispositional line. However, some cases carry a mandatory prison sentence under state law but fall below the dispositional line on the Sentencing Guidelines Grid; e.g., Assault in the Second Degree. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer. These crimes are ranked below the dispositional line because the Commission believes the durations at these levels are more proportional to the crime than the durations found at the higher severity levels where prison is recommended regardless of the criminal history score of the offender. For example, according to Minn. Stat. § 609.11, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. However, according to the guidelines, the presumptive duration is the mandatory minimum or the duration provided in the appropriate cell of the grid, whichever is longer. Therefore, for someone convicted of Assault in the Second Degree with no criminal history score, the guidelines presume a 21 month prison duration based on the appropriate cell of the grid found at severity level VI. The Commission believes this duration is more appropriate than the 48 month prison duration that would be recommended if this crime were ranked at severity level VIII which is the first severity level ranked completely above the dispositional line.*

When the mandatory minimum sentence is for less than one year and one day, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition would not be commitment to the Commissioner unless the case falls above the dispositional line on the Sentencing Guidelines Grid. An example would be a conviction for simple possession of cocaine, a Fifth Degree Controlled Substance Crime. If the person has previously been convicted of a controlled substance crime, the mandatory minimum law would require at least six months incarceration which could be served in a local jail or workhouse.

II.E.03. *In 1981 the mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minn. Stat. § 609.11) was amended to provide that the court shall determine the firearm or other dangerous weapon use or firearm possession based upon the record of the trial or plea of guilty and does not require the citing of this provision. If the court makes a finding that a dangerous weapon was involved, the mandatory minimum applies pursuant to Minn. Stat. § 609.11. This provision also provides prosecutors with the authority to make a motion to sentence apart from the mandatory minimum sentence. In State v. Olson, 325 N.W.2d 13 (Minn. 1982), the Supreme Court extended that authority to judges as well. When a motion to sentence apart from the mandatory minimum is made by the prosecutor or the judge, it becomes legal to stay imposition or execution of sentence or to impose a lesser sentence than the mandatory minimum. When such a motion is made, the presumptive disposition for the case is still imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater. A stay of imposition or execution for the case constitutes a mitigated dispositional departure. The*

imposition of a duration less than the mandatory minimum or cell time, if the latter is greater, constitutes a mitigated durational departure. Written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the sentence selected is more appropriate, reasonable or equitable than the presumptive sentence are required.

There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies; for example, Assault in the Second Degree, Drive-By Shootings, and Certain Persons Not to Have Firearms. The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.

II.E.04. *In State v. Feinstein, 338 N.W.2d 244 (Minn. 1983), the Supreme Court held that judges had the authority to stay execution of mandatory three year prison sentences for second or subsequent sex offenses. Although the Supreme Court decision authorized stays of execution for second or subsequent sex offenses, the presumptive disposition for second or subsequent sex offenses is still imprisonment. A stay of execution for such a case constitutes a dispositional departure and written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the disposition selected is more appropriate, reasonable, or equitable than the presumptive disposition are required.*

II.E.05. *M.S. § 609.109 requires that when a court sentences a person to prison for a violation of section 609.342, 609.343, 609.344, or 609.345, the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections a second or subsequent time, or sentenced to a mandatory departure pursuant to section 609.109, subd. 6, the person shall be placed on conditional release for ten years, minus the time served on supervised release. M.S. § 169A.276, subd. 1(d) requires that when the court commits a person to the custody of the commissioner of corrections for first degree (felony) driving while impaired, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.*

F. Concurrent/Consecutive Sentences: Generally, 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 sentencing is presumptive. In certain situations consecutive sentences are presumptive; there are other situations in which consecutive sentences are permissive. These situations are outlined below. 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 D of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

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.

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving or on supervised release, or on escape status from an executed prison sentence.

Consecutive sentences are presumptive under the above criteria only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence(s) to be consecutive to the sentence being served by the offender at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the

defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing.

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or

2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or

3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or

4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined; or

5. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from an executed felony sentence may be sentenced consecutively to the sentence for the escape; or

6. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minn. Stat. § 609.487 or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minn. Stat. § 609.342 through 609.345.

Consecutive sentences are permissive under the above criteria numbers 1-4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under number 1 above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Consecutive sentences are always permissive under the above criteria numbers 5 and 6.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. 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 sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.

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. Generally, the Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines.*

For felony convictions committed while an offender is serving, or on escape status from, an executed prison sentence, it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving at the time the new offense was committed. As defined in Minn. Stat. § 244.101, "executed prison sentence" includes both the term of imprisonment and period of supervised release. The guidelines create a presumption against the use of consecutive sentences in all other 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.

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.02. *The order of sentencing when consecutive sentences are imposed by the same judge is to sentence in the order in which the offenses occurred. For persons given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history column, or the mandatory minimum, whichever is greater.*

For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column of the Grid, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing.

The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the judge executed a 44 month fixed sentence, and a 24 month fixed sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate the sentences into a single 68 month fixed sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.

II.F.03. *The presumptive disposition for an escape from an executed sentence or a felony assault committed by an inmate serving an executed term of imprisonment is commitment to the Commissioner of Corrections. It is presumptive for sentences for these offenses to be consecutive to the sentence the inmate was serving at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is*

commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C.

In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 27 months, the term of imprisonment would be 18 months and because the sentence runs concurrently with the first offense, the total time to be served would be 18 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 4 months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

II.F.04. *The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.*

It is permissive for multiple current felony convictions against persons to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. Presumptive Sentence. Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.

If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to the offense for which the offender was confined regardless of whether the other sentence is for a crime against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.

Sentences for offenses committed while on escape status from an executed sentence which have presumptive dispositions of commitment to the Commissioner of Corrections are presumptive consecutive to the sentence being served by the offender at the time of the escape. In addition, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.

II.F.05. *The Commissioner of Corrections 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 revoked and reimprisoned 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 Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.

II.F.06. *Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of $5,000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery in the First Degree with use of a gun and had a zero criminal history score, the presumptive sentence for the offense would be 48 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.*

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender – Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495, subd. 4, 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 or intended offense or the offense committed by the principal offender, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.096, in which event the presumptive sentence shall be that for the completed offense.

For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grid cell, whichever is greater. For persons convicted of an attempt or conspiracy to commit Criminal

Sexual Conduct in the First Degree (M.S. § 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. § 609.343, subd. 1(c), (d), (e), (f), and (h)), the presumptive duration is one-half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer.

For persons sentenced under Minn. Stat. § 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased 50%. 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 underlying crime.

Further, the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, or Conspiracy to Commit or Attempted First Degree Murder of an Unborn Child, Minn. Stat. § 609.2661, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

	CRIMINAL HISTORY SCORE						
SEVERITY LEVELS OF CONVICTION OFFENSE	**0**	**1**	**2**	**3**	**4**	**5**	**6 or More**
Conspiracy/Attempted Murder, 1st Degree	**180 176-184**	**190 186-194**	**200 196-204**	**210 206-214**	**220 216-224**	**230 226-234**	**240 236-240**

For persons sentenced under Minn. Stat. § 609.229, subd. 3(a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive disposition is always commitment to the Commissioner of Corrections due to the mandatory minimum under Minn. Stat. § 609.229, subd. 4. The presumptive duration is determined by the duration contained in the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 12 months. If the underlying crime is an attempt, the presumptive duration includes an additional 6 months rather than 12.

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.*

II.G.02. *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 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 over $2,500 (severity level III), with a criminal history score of 1, the duration of the stay could be up to ten 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 sentences. 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. 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.*

III.A.202. *While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing judge to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states that an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the prior criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive guidelines duration.*

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 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 in connection with the offense, including examinations under Minn. R. Crim. P. 20 or 27.03, subd.1(A), 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 by subtracting the time from the specified minimum term of imprisonment and if there is any remaining time, subtracting such time from the specified maximum period of supervised release. Jail credit shall be awarded based on the following criteria:

1. Jail credit for time spent in custody shall not turn on matters subject to manipulation by the prosecutor.

2. Jail credit shall not result in double credit when applied to consecutive sentences.

3. Jail credit shall reflect time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender is committed to the custody of the Commissioner of Corrections. Such credit is limited to time spent in jails, workhouses, and regional correctional facilities.

4. Jail credit shall be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minn. Stat. § 631.425).

Comment

III.C.01. *In order to promote the goals of the sentencing guidelines, it is important to ensure that jail credit is consistently applied to reflect all time spent in custody in connection with the offense. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that a person in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial. The Commission believes that greater uniformity in the application of jail credit can be achieved by following the general*

criteria noted above in section III.C. Jail Credit.

III.C.02. *Determining the appropriate application of jail credit for an individual can be very complicated, particularly when multiple offenses are involved. While the Commission recognizes the difficulty in interpreting individual circumstances, it believes that the court should award jail credit so that it does not turn on matters that are subject to the manipulation by the prosecutor. The purpose of this criteria is to ensure that if the intent of the court is to give concurrent sentences, the withholding of jail credit does not result in de facto consecutive sentences.*

III.C.03. *The Commission is equally concerned that if the intent of the court is to give consecutive sentences, the awarding of jail credit should not result in de facto concurrent sentences. Therefore, when applying jail credit to consecutive sentences, credit is only applied to the first sentence in order to avoid awarding double credit. In order to avoid de facto concurrent sentences when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in a prison or jail, no jail credit shall be awarded on the current offense.*

III.C.04. *The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed, the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12 without awarding jail credit. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.*

Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities or on electronic monitoring as a condition of a stay of imposition or stay of execution.

III.C.05. *In computing jail time credit, each day or portion of a day in jail should be counted as one full day of credit. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day. Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served.*

III.C.06. *In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall be computed by the Commissioner of Corrections and subtracted from the specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who

post bond.

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. 27.03, subd. 1(A), 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.

F. Modifications: Modifications to the Minnesota Sentencing Guidelines and associated commentary will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary that relate to clarifications of existing policy will be applied to offenders sentenced on or after the specified effective date.

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

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

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

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

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

[1] One year and one day

[2] Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

Effective January 1, 2003

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

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

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

V. OFFENSE SEVERITY REFERENCE TABLE

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

XI

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

X

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

IX

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

VIII

Aggravated Robbery 1 - 609.245, subd. 1
Arson 1 - 609.561
Burglary 1 - 609.582, 1(b) & (c)
Controlled Substance Crime in the Second Degree - 152.022
Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (a) (2)
Criminal Sexual Conduct 1 (sexual contact - victim under 13) - 609.342
(See II.C. Presumptive Sentence and II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.)
Criminal Sexual Conduct 2 - 609.343, 1(c), (d), (e), (f), & (h)
(See II.C. Presumptive Sentence and II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.)
Criminal Sexual Conduct 3 - 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), (m), & (n)
Criminal Vehicular Homicide and Injury - 609.21, subd. 1 & 3
Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (b)

VIII

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

VII

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

VI

Aggravated Robbery 2 – 609.245, subd. 2
Assault 2 - 609.222
Bringing Stolen Goods into State (over $2,500) - 609.525
Burglary 1 - 609.582, subd. 1(a)
Certain Persons Not to Have Firearms - 624.713, subd. 1 (b); 609.165, subd. 1b
Controlled Substance Crime in the Third Degree (non aggregated offenses) - 152.023
Criminal Sexual Conduct 2 - 609.343, subd. 1(a), (b), & (g)
Criminal Sexual Conduct 4 - 609.345, 1(c), (d), (g), (h), (i), (j), (k), (l), (m), & (n)
Discharge of Firearm at Occupied Transit Vehicle/Facility - 609.855, subd. 5
Explosive Device or Incendiary Device - 609.668, subd. 6
Failure to Affix Stamp on Cocaine - 297D.09, subd. 1
Failure to Affix Stamp on Hallucinogens or PCP - 297D.09, subd. 1
Failure to Affix Stamp on Heroin - 297D.09, subd. 1
Failure to Affix Stamp on Remaining Schedule I & II Narcotics - 297D.09, subd. 1
Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b)
Kidnapping (safe release/no great bodily harm) - 609.25, subd. 2(1)
Precious Metal Dealers, Receiving Stolen Goods (over $2,500) - 609.526, (1)
Precious Metal Dealers, Receiving Stolen Goods (over $300) - 609.526, 2nd or subs. Violations
Price Fixing/Collusive Bidding - 325D.53, subd. 1 (2) (a)
Theft over $35,000 - 609.52, subd. 2 (3), (4), (15), & (16) with 609.52, subd. 3 (1)

V

Arson 2 - 609.562
Bringing Stolen Goods into State ($1,000 - $2,500) - 609.525
Burglary - 609.582, subd. 2 (a) & (b)
Check Forgery over $35,000 - 609.631, subd. 4 (1)
Criminal Sexual Conduct 3 - 609.344, subd. 1(b), (e), & (f)
Criminal Vehicular Homicide and Injury - 609.21, subd. 2 & 4
Financial Exploitation of a Vulnerable Adult (over $2,500) - 609.2335
Financial Transaction Card Fraud over $35,000 - 609.821, subd. 3 (1) (l)
Harassment/Stalking (third or subsequent violations) - 609.749, subd. 4(b)
Harassment/Stalking (pattern of harassing conduct) - 609.749, subd. 5
Manslaughter 2 - 609.205 (2), (3), & (4)
Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4)
Negligent Discharge of Explosive - 299F.83
Perjury - 609.48, subd. 4 (1)

Possession or Use (unauthorized) of Explosives - 299F.79; 299F.80, subd. 1; 299F.82, subd. 1
Price Fixing/Collusive Bidding – 325D.53, subd. 1 (1), and subd. 1 (2) (b) & (c)
Prostitution (Patron) - 609.324, subd. 1 (b)

V

Riot 1 - 609.71, subd. 1
Simple Robbery – 609.24
Solicits, Promotes, or Receives Profit Derived from Prostitution - 609.322, subd. 1a
Tampering with Witness in the First Degree - 609.498, subd. 1a

Adulteration - 609.687, subd. 3 (2)
Assault 2 of an Unborn Child - 609.2671
Assault 3 - 609.223, subd. 1, 2, & 3
Assault 5 (3rd or subsequent violation) - 609.224, subd. 4
Bribery - 609.42; 90.41; 609.86
Bring Contraband into State Prison - 243.55
Bring Dangerous Weapon into County Jail - 641.165, subd. 2 (b)
Bringing Stolen Goods into State ($301 - $999) - 609.525
Burglary 2 - 609.582, subd. 2 (c) & (d)
Burglary 3 - 609.582, subd. 3
Controlled Substance Crime in the Fourth Degree - 152.024
Criminal Abuse of Vulnerable Adult (substantial bodily harm) - 609.2325, subd. 3 (a) (3)
Criminal Sexual Conduct 4 - 609.345, subd. 1(b), (e), & (f)
Criminal Sexual Conduct 5 - 609.3451, subd. 3
Domestic Assault - 609.2242, subd. 4
False Imprisonment (substantial bodily harm) - 609.255, subd. 3
Financial Exploitation of a Vulnerable Adult ($2,500 or less) - 609.2335
Fleeing a Peace Officer (substantial bodily harm) - 609.487, subd. 4 (c)
Harassment/Stalking (aggravated violations) - 609.749, subd. 3(a),(b)

IV

Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4(a)
Indecent Exposure - 617.23, subd. 3(a), (b)
Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2
Malicious Punishment of Child (2nd or subsequent violation) - 609.377, subd. 3
Malicious Punishment of Child (bodily harm) – 609.377, subd. 4
Malicious Punishment of Child (substantial bodily harm) - 609.377, subd. 5
Negligent Fires - 609.576, subd. 1 (a)
Perjury - 300.61; & 609.48, subd. 4 (2)
Precious Metal Dealers, Receiving Stolen Goods ($301 - $2,500) - 609.526 (1) & (2)
Receiving Stolen Property (firearm) - 609.53
Security Violations (over $2,500) – 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3
Sports Bookmaking - 609.76, subd. 2
Terroristic Threats - 609.713, subd. 1
Theft From Person - 609.52
Theft of Controlled Substances - 609.52, subd. 3 (2)
Theft of Firearm - 609.52, subd. 3 (1)
Theft of Incendiary Device - 609.52, subd. 3 (2)
Theft of Motor Vehicle – 609.52, subd. 2 (1)
Use of Drugs to Injure or Facilitate Crime - 609.235
Violation of an Order for Protection - 518B.01, subd. 14 (d)
Violation of Restraining Order - 609.748, subd. 6 (d)
Weapon in Courthouse or Certain State Buildings - 609.66, subd. 1g

Arson 3 - 609.563
Check Forgery (over $2,500) - 609.631, subd. 4 (2)
Coercion - 609.27, subd. 1 (1)
Coercion (over $2,500) – 609.27, subd. 1 (2), (3), (4), & (5)
Criminal Vehicular Homicide and Injury - 609.21, subd. 2a
Damage to Property - 609.595, subd. 1 (1)
Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd. 2
Dangerous Smoking - 609.576, subd. 2
Dangerous Trespass, Railroad Tracks - 609.85(1)
Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2; 624.713, subd. 1 (a)
Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (2)
Drive-By Shooting (unoccupied motor vehicle or building) - 609.66, subd. 1e (a)
Escape from Custody - 609.485, subd. 4 (a) (1)
False Imprisonment - 609.255, subd. 2
False Traffic Signal - 609.851, subd. 2
Firearm Silencer (public housing, school, or park zone) - 609.66, subd. 1a (a)(1)
Gambling Taxes - 297E.13, subd. 1-4

III

Hinder Logging (great bodily harm) - 609.591, subd. 3 (1)
Identity Theft - 609.527, subd. 3 (4)
Insurance Tax - 297I.90, subd. 1 & 2
Intentional Release of Harmful Substance - 624.732, subd. 2
Motor Vehicle Use Without Consent - 609.52, subd. 2 (17)
Obstructing Legal Process, Arrest, or Firefighting - 609.50, subd. 2
Possession of Burglary Tools - 609.59
Possession of Code Grabbing Devices - 609.586, subd. 2
Possession of Shoplifting Gear - 609.521
Possession or Sale of Stolen or Counterfeit Check - 609.528, subd. 3 (4)
Prostitution (Patron) - 609.324, subd. 1 (c)
Receiving Stolen Goods (over $2,500) - 609.53
Security Violations (under $2,500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3
Solicitation of Children to Engage in Sexual Conduct - 609.352, subd. 2
Tampering with Fire Alarm System (results in bodily harm) - 609.686, subd. 2
Tax Evasion Laws – 289A.63
Tear Gas & Tear Gas Compounds; Electronic incapacitation devices - 624.731, subd. 8(a)
Theft Crimes - Over $2,500 (*See Theft Offense List*)
Theft of Controlled Substances - 609.52, subd. 3 (3) (b)
Theft of Public Records - 609.52
Theft of Trade Secret - 609.52, subd. 2 (8)
Unauthorized Presence at Camp Ripley - 609.396, subd. 2

Accidents - 169.09, subd. 14 (a) (1)
Aggravated Forgery (misc) (non-check) - 609.625; 609.635; 609.64
Bribery of Participant or Official in Contest - 609.825, subd. 2
Cellular Counterfeiting 1 – 609.894, subd. 4
Check Forgery ($251 - $2,500) - 609.631, subd. 4 (3) (a)
Coercion ($300 - $2,500) - 609.27, subd. 1 (2), (3), (4), & (5)

II

Controlled Substance in the Fifth Degree – 152.025
Counterfeited Intellectual Property - 609.895, subd. 3 (a)
Damage to Property - 609.595, subd. 1 (2), (3), & (4)
Discharge of Firearm (intentional) - 609.66, subd. 1a (a) (2)
Discharge of Firearm (public housing, school, or park zone) - 609.66, subd. 1a (a) (2) & (3)
Dishonored Check (over $500) - 609.535, subd. 2a(a)(1)

Duty to Render Aid (death or great bodily harm) - 609.662, subd. 2 (b) (1)
Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics - 297D.09, subd. 1
Firearm Silencer - 609.66, subd. 1a (a) (1)
Furnishing a Dangerous Weapon - 609.66, subd. 1c
Furnishing Firearm to Minor - 609.66, subd. 1b
Gambling Regulations - 349.2127, subd. 1-6; 349.22, subd. 4
Identity Theft - 609.527, subd. 3 (3)
Negligent Fires (damage greater than $2,500) - 609.576, subd. 1 (b) (3)

II Possession or Sale of Stolen or Counterfeit Check – 609.528, subd. 3 (3)

Precious Metal Dealers, Regulatory Provisions - 325F.743
Receiving Stolen Goods ($2,500 or less) - 609.53
Riot 2 - 609.71, subd. 2
Telecommunications Fraud - 609.893, subd. 2
Terroristic Threats - 609.713, subd. 2
Theft - Looting - 609.52
Theft Crimes - $2,500 or less (*See Theft Offense List*)
Transfer Pistol to Ineligible Person - 624.7141, subd. 2
Transfer Pistol to Minor - 624.7132, subd. 15 (b)
Wildfire Arson - 609.5641, subd. 1

Accidents - 169.09, subd. 14 (a) (2)
Assault 4 - 609.2231, subd. 1, 2 & 3
Assault Weapon in Public if Under 21 - 624.7181, subd. 2
Assaulting or Harming a Police Horse - 609.597, subd. 3 (3)
Assaults Motivated by Bias - 609.2231, subd. 4 (b)
Aiding Offender to Avoid Arrest - 609.495, subd. 1
Bullet-Resistant Vest During Commission of Crime – 609.486
Cable Communication Systems Interference - 609.80, subd. 2
Cellular Counterfeiting 2 - 609.894, subd. 3
Certification for Title on Watercraft - 86B.865, subd. 1
Check Forgery ($250 or less) - 609.631, subd. 4 (3) (b)
Child Neglect/Endangerment - 609.378
Counterfeited Intellectual Property - 609.895, subd. 3 (b)
Crime Committed for Benefit of Gang – 609.229, subd. 3 (c)
Criminal Damage to Property Motivated by Bias - 609.595, subd. 1a, (a)

I Criminal Penalties Regarding the Activities of Corporations - 300.60

Dangerous Weapons on School Property - 609.66, 1d(a)
Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (1)
Discharge of Firearm (reckless) - 609.66, subd. 1a (a) (3)
Discharge of Firearm at Unoccupied Transit Vehicle/Facility - 609.855, subd. 5
Duty to Render Aid (substantial bodily harm) - 609.662, subd. 2 (b) (2)
Escape from Custody - 609.485, subd, 4 (a) (2)
Excise Tax on Alcoholic Beverages - 297C.13, subd. 1
Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols - 297D.09, subd. 1
Failure to Affix Stamp on Schedule IV Substances – 297D.09, subd. 1
Failure to Appear in Court - 609.49; 588.20, subd. 1
False Declaration - 256.984
False Information - Certificate of Title Application - 168A.30
Financial Transaction Card Fraud - 609.821, subd. 2 (3) & (4)
Fleeing A Peace Officer - 609.487, subd. 3

Forgery - 609.63; and Forgery Related Crimes (*See Forgery Related Offense List*)
Fraudulent Drivers' Licenses and Identification Cards – 609.652
Insurance Regulations – 62A.41
Interference with Transit Operator - 609.855, subd. 2 (c) (1)
Leaving State to Evade Establishment of Paternity – 609.31
Lottery Fraud - 609.651, subd. 1 with subd. 4(a)
Motor Vehicle Taxes - 296.25, subd. 1(b)
Nonsupport of Spouse or Child - 609.375, subd. 2a
Pistol without a Permit (2nd or subsequent violation) - 624.714, subd. 1 (a)
Prize Notices and Solicitations - 325F.755, subd. 7
Prostitution Crimes (gross misdemeanor level) Committed in School or Park Zones - 609.3242, subd. 2 (2)
Remove or Alter Serial Number on Firearm - 609.667
Sale of Simulated Controlled Substance - 152.097
Tampering with a Fire Alarm (potential for bodily harm) - 609.686, subd. 2
Terroristic Threats - 609.713, subd. 3 (a)
Theft from Abandoned or Vacant Building ($500 or less) - 609.52, subd. 3 (3) (d) (iii)
Unlawful Acts Involving Liquor - 340A.701
Voting Violations – Chapter 201, 203B, & 204C

Theft Offense List

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

Altering Serial Number
609.52, subd. 2(10) & (11)

Computer Damage
609.88

Computer Theft
609.89

Defeating Security on Personalty
609.62

Defeating Security on Realty
609.615

Defrauding Insurer
609.611

Diversion of Corporate Property
609.52, subd. 2(15) & (16)

Embezzlement of Public Funds
609.54

Failure to Pay Over State Funds
609.445

False Declaration of Claim
471.392

False Representations
268.182

Federal Food Stamp Program
393.07, subd. 10

Financial Transaction Card Fraud
609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Fraud in Obtaining Credit
609.82

Medical Assistance Fraud
609.466

Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft)
514.02, subd. 1(b)

Permitting False Claims Against Government
609.455

Presenting False Claims to Public Officer or Body
609.465

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

Rustling and Livestock Theft
609.551

Taking Pledged Property
609.52, subd. 2(2)

Telecommunications and Information Services Fraud
609.893, subd. 1

Temporary Theft
609.52, subd. 2(5)

Theft
609.52, subd. 2(1)

Theft by Check
609.52, subd. 2(3) (i)

Theft by False Representation
609.52, subd. 2(3) (ii), (iii), (iv), & (v)

Theft by Soldier of Military Goods
192.36

Theft by Trick
609.52, subd. 2(4)

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

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

Theft of Public Funds
609.52

Theft of Registered Bicycles
168C.09

Theft of Services
609.52, subd. 2(13)

Theft of Telecommunications Services
609.52, subd. 2(14)

Theft from Coin Operated Machines
609.52, subd. 2(7)

Workers Compensation Fraud
176.178

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)

Misdemeanor and Gross Misdemeanor Offense List

The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

Arson in the Fourth Degree
609.5631

Assault in the Fourth Degree
609.2231, subd. 1, 2a, 4, 5, & 6

Assault in the Fifth Degree
609.224

Burglary in the Fourth Degree
609.582

Carrying Pistol
624.714

Certain Persons Not to Possess Firearms
624.713, subd. 2

Check Forgery
609.631

Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility)
641.165

Contributing to Delinquency of Minor
260.315

Criminal Abuse of Vulnerable Adult (bodily harm)
609.2325, subd. 3 (a) (4)

Criminal Sexual Conduct 5th Degree
609.3451

Criminal Vehicular Homicide and Injury (bodily harm)
609.21, subd. 2b

Damage to Property
609.595

Dangerous Weapons
609.66

Domestic Assault
609.2242, subd. 1 & 2

Fleeing a Police Officer
609.487

Furnishing Liquor to Persons Under 21
340A.503

Harassment/Stalking
609.749, subd. 2 & 8

Indecent Exposure
617.23

Interference with Privacy
609.746

Letter, Telegram, or Package; Opening; Harassment
609.795

Malicious Punishment of a Child
609.377

Obscene or Harassing Telephone Calls
609.79

Overworking or Mistreating Animals (second or subsequent torture or cruelty)
343.21, subd. 9(a)

Possession of Small Amount of Marijuana in Motor Vehicle
152.027, subd. 3

Receiving Stolen Property
609.53

Theft
609.52, subd. 2(1)

Torture or Cruelty to Pet or Companion Animal (substantial bodily harm)
343.21, subd. 9(b)

Trespass (gross misdemeanor)
609.605

Violation of Harassment Restraining Order
609.748

Violating an Order for Protection or Domestic Abuse No Contact Order
518B.01; subd. 14 & 22

DEFINITION OF TERMS

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.

Day Fines are a monetary penalty assessed on an equality formula determined by the seriousness of the offense and the offender's financial status - e.g., 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.

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 presumptive sentence and provide any sentence authorized by law. When departing from the presumptive sentence, the judge must provide written reasons which articulate the substantial and compelling circumstances, and which demonstrate why the sentence given is more appropriate or fair than the presumptive sentence.

Executed Sentence means the total period of time for which an inmate is committed to the custody of the Commissioner of Corrections.

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 and prior to August 1, 1993. 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.

Presumptive Fixed Sentences are those sentences provided in the sentencing guidelines and the sentencing guidelines grid. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics. They are fixed because there is no discretionary release authority.

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 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.

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. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the period of supervised release is defined by Minn. Stat. § 244.101 to be one-third of the total executed sentence pronounced by the court. For offenders sentenced for crimes committed on or after May 1, 1980 and prior to August 1, 1993, the period of supervised release equals the amount of good time earned. The Commissioner of Corrections establishes conditions which the offender must obey during supervised release, and if those conditions are violated, the Commissioner of Corrections may revoke the supervised release and return the offender to prison for a period not to exceed the time left on the sentence.

Term of Imprisonment is defined differently for offenders who commit their offense prior to August 1, 1993 and those who commit their offense on or after that date. For offenders who are committed to the Commissioner of Corrections for crimes occurring on or after August 1, 1993, the term of imprisonment is defined by Minn. Stat. § 244.101 as two-thirds of the total executed sentence. For offenders who are committed to the Commissioner of Corrections for crimes occurring on or after May 1, 1980 and prior to August 1, 1993, term of imprisonment is the length of the prison sentence reduced by earned good time. 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.

NUMERICAL REFERENCE OF FELONY STATUTES

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.

STATUTE	OFFENSE	SEVERITY LEVEL
3.191	Altering Engrossed Bill	unranked
6.53	Refusal to Assist	unranked
18D.331 subd. 5	Anhydrous Ammonia (tamper/theft/transport)	unranked
35.824	Altering Livestock Certificate	1
62A.41	Insurance Regulations	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 - $2,500 or less	3
82A.03; 82A.13; 82A.25	Sale of Membership Camping Contracts	unranked
83.43	Subdivided Land Fraud	unranked
86B.865 subd. 1	Certification for Title on Watercraft	1
90.41 subd. 1	Bribery - State Appraiser and Scaler	4
145.412	Abortion	unranked
145B.105	Forced Execution of a Declaration	unranked
152.021	Controlled Substance Crime 1	9
152.022	Controlled Substance Crime 2	8
152.023	Controlled Substance Crime 3 (aggregated offenses)	unranked
152.023	Controlled Substance Crime 3 (non aggregated offenses)	6
152.024	Controlled Substance Crime 4	4
152.025	Controlled Substance Crime 5	2

STATUTE	OFFENSE	SEVERITY LEVEL
152.0261	Importing Controlled Substances Across State Borders	9
152.097	Sale of Simulated Controlled Substance	1
168A.30	False Information - Certificate of Title Application	1
169.09 subd. 14(a)(1)	Accidents- Resulting in Death	2
169.09 subd. 14(a)(2)	Accidents- Great Bodily Harm	1
169A.24	First Degree (Felony) Driving While Impaired	7
176.178	Workers Compensation Fraud - over $2,500	3
176.178	Workers Compensation Fraud - $2,500 or less	2
192.36	Theft by Soldier of Military Goods-over $2,500	3
192.36	Theft by Soldier of Military Goods-$2,500 or less	2
201, 203B, 204C (Chapters)	Voting Violations	1
227.50	Issuing a Receipt for Goods One Does Not Have	unranked
227.52	Issuing a Second Receipt w/out “Duplicate” On It	unranked
228.45, 47, 49, 50, 51	False Bill of Lading	1
240.25	Horse Racing - Prohibited Act	unranked
243.161	Interstate Compact Violation	unranked
243.166 subd. 5	Registration of Predatory Offenders	unranked
243.55	Bringing Contraband into State Prison	4
256.98	Welfare Fraud - over $2,500	3
256.98	Welfare Fraud - $2,500 or less	2
256.984	False Declaration	1
268.182	False Representations - over $2,500	3
268.182	False Representations - $2,500 or less	2
289A.63	Tax Evasion Laws	3
296.25 subd. 1(b)	Motor Vehicle Taxes	1

STATUTE	OFFENSE	SEVERITY LEVEL
297B.10	Motor Vehicle Excise Tax	unranked
297C.13 subd. 1	Excise Tax on Alcoholic Beverages	1
297D.09 subd. 1	Failure to Affix Stamp on Cocaine	6
297D.09 subd. 1	Failure to Affix Stamp on Hallucinogens or PCP (Angel Dust), incl. LSD	6
297D.09 subd. 1	Failure to Affix Stamp on Heroin	6
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I and II Narcotics	6
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non Narcotics	2
297D.09 subd. 1	Failure to Affix Stamp on Marijuana/Hashish/ Tetrahydrocannabinols	1
297D.09 subd. 1	Failure to Affix Stamp on Schedule IV Substance	1
297E.13 subd. 1-4	Gambling Taxes	3
297F.20	Cigarette Tax and Regulation Violations	unranked
297I.90 subd. 1 & 2	Insurance Tax	3
299F.79	Intent to Manufacture Explosives	5
299F.80 subd. 1	Possession of Explosives Without Permit	5
299F.82 subd. 1	Transfer of Explosives	5
299F.83	Negligent Discharge of Explosive	5
299J.07 subd. 2	Pipeline Safety	unranked
300.60	Activities of Corporations	1
300.61	False Statement by Corporate Officer (perjury)	4
307.08 subd. 2	Damages; Illegal Molestation of Human Remains; Burials; Cemeteries	3
325D.53 subd. 1(2)(a)	Price Fixing/Collusive Bidding	6
325D.53 subd. 1(1) subd. 1(2)(b)(c)	Price Fixing/Collusive Bidding	5
325D.53 subd. 1(3) subd. 2 & 3	Price Fixing/Collusive Bidding	unranked

STATUTE	OFFENSE	SEVERITY LEVEL
325E.201	Unlawful Transfer of Sounds; Sales	unranked
325F.743	Precious Metal Dealers, Regulatory Provisions	2
325F.755 subd. 7	Prize Notices and Solicitations	1
340A.701	Unlawful Acts Involving Liquor	1
343.21, subd. 9(c)(d)(f)(h)	Torture or Cruelty to Pet or Companion Animal	unranked
343.21, subd. 9(e)(g)	Service Animal Providing Service	unranked
343.31	Animal Fighting	unranked
349.2127 subd. 1-6; 349.22 subd. 4	Gambling Regulations	2
393.07 subd.10	Federal Food Stamp Program-over $2,500	3
393.07 subd.10	Federal Food Stamp Program-$2,500 or less	2
471.392	False Declaration of Claim - over $2,500	3
471.392	False Declaration of Claim - $2,500 or less	2
514.02 subd. 1(b)	Non-payment for Improvement – over $2,500 (Proceeds of Payments; Acts Constituting Theft)	3
514.02 subd. 1(b)	Non-payment for Improvement – $2,500 or less (Proceeds of Payments; Acts Constituting Theft)	2
518B.01 subd. 14(d)	Violation of an Order for Protection	4
588.20 subd. 1	Failure to Appear in Court	1
609.165 subd. 1b	Certain Persons Not to Have Firearms	6
609.19 subd. 1	Murder 2 (intentional murder; unintentional drive-by-shootings)	11
609.19 subd. 2	Murder 2 (unintentional murder)	10
609.195(a)	Murder 3	10
609.195(b)	Murder 3	9
609.20(1), (2) & (5)	Manslaughter 1	9
609.20(3) & (4)	Manslaughter 1	8
609.205(1) & (5)	Manslaughter 2 - Culpable Negligence	8
609.205(2), (3) & (4)	Manslaughter 2 - Hunting Accident	5

STATUTE	OFFENSE	SEVERITY LEVEL
609.21 subd. 1 & 3	Criminal Vehicular Homicide and Injury - Death	8
609.21 subd. 2 & 4	Criminal Vehicular Homicide and Injury - Great Bodily Harm	5
609.21 subd. 2a	Criminal Vehicular Homicide and Injury - Substantial Bodily Harm	3
609.215	Aiding Suicide	unranked
609.221	Assault 1 - Great Bodily Harm	9
609.222	Assault 2 - Dangerous Weapon	6
609.223 subd. 1	Assault 3 - Substantial Bodily Harm	4
609.223 subd. 2	Assault 3 - Bodily Harm, Pattern of Child Abuse	4
609.223 subd. 3	Assault 3 - Bodily Harm, Victim Under 4	4
609.2231 subd. 1	Assault 4 - Bodily Harm, Peace Officer	1
609.2231 subd. 2	Assault 4 - Bodily Harm, Firefighters	1
609.2231 subd. 3	Assault 4 - Bodily Harm, Corrections Employee	1
609.2231 subd. 4 (b)	Assaults Motivated by Bias	1
609.224 subd. 4	Assault 5 - 3rd or subsequent violation	4
609.2241	Knowing Transfer of Communicable Disease	see note[1]
609.2242 subd. 4	Domestic Assault	4
609.2245	Female Genital Mutilation	unranked
609.228	Great Bodily Harm - Distribution of Drugs	8
609.229 subd. 3 (a)	Crime Committed for Benefit of Gang	see note[2]
609.229 subd. 3 (c)	Crime Committed for Benefit of Gang	1
609.2325 subd. 3(a)(1)	Criminal Abuse of Vulnerable Adult - Death	9
609.2325 subd. 3(a)(2)	Criminal Abuse of Vul. Adult - Great Bodily Harm	8
609.2325 subd. 3(a)(3)	Criminal Abuse of Vul. Adult - Subst. Bodily Harm	4

[1] See *Comment II.A.08.* to determine the presumptive sentence.

[2] See Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers to determine the presumptive sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
609.2335	Financial Exploitation of Vul. Adult - over $2,500	5
609.2335	Financial Exploitation of Vul. Adult $2,500 or less	4
609.235	Use of Drugs to Injure or Facilitate Crime	4
609.24	Simple Robbery	5
609.245 subd. 1	Aggravated Robbery 1	8
609.245 subd. 2	Aggravated Robbery 2	6
609.25 subd. 2(1)	Kidnapping-Safe Release/No Great Bodily Harm	6
609.25 subd. 2(2)	Kidnapping - Great Bodily Harm	9
609.25 subd. 2(2)	Kidnapping - Unsafe Release	8
609.25 subd. 2(2)	Kidnapping - Victim Under 16	8
609.255 subd. 2	False Imprisonment - Restraint	3
609.255 subd. 3	False Imprisonment - Substantial Bodily Harm	4
609.26 subd. 6(a) (1)	Depriving Another of Cust. or Parental Rights	1
609.26 subd. 6(a) (2)	Depriving Another of Cust. or Parental Rights	3
609.2662(1)	Murder 2 of an Unborn Child	11
609.2662(2)	Murder 2 of an Unborn Child	10
609.2663	Murder 3 of an Unborn Child	10
609.2664(1) & (2)	Manslaughter 1 of an Unborn Child	9
609.2664 (3)	Manslaughter 1 of an Unborn Child	8
609.2665 (1)	Manslaughter 2 of an Unborn Child	8
609.2665 (2),(3),&(4)	Manslaughter 2 of an Unborn Child	5
609.267	Assault 1 of an Unborn Child	9
609.2671	Assault 2 of an Unborn Child	4
609.268 subd. 1	Death of an Unborn Child in Comm. of Crime	9
609.268 subd. 2	Injury of an Unborn Child in Comm. of Crime	4
609.27 subd. 1 (1)	Coercion - Threat Bodily Harm	3
609.27 subd. 1(2)(3)(4)(5)	Coercion-Prop. Value over $2,500	3

STATUTE	OFFENSE	SEVERITY LEVEL
609.27 subd. 1(2)(3)(4)(5)	Coercion-Prop. Value $300-$2,500	2
609.31	Leaving State to Evade Paternity	1
609.322 subd. 1	Solicits, Promotes, or Receives Profit Derived from Prostitution; Indiv. Under 18	9
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution	5
609.324 subd. 1(a)	Prostitution (Patron)	9
609.324 subd. 1(b)	Prostitution (Patron)	5
609.324 subd. 1(c)	Prostitution (Patron)	3
609.3242 subd. 2(2)	Prostitution Crimes (gross misd. level) Committed in School or Park Zones	1
609.342	Criminal Sexual Conduct 1 (Sexual Penetration)	9 *
609.342	Criminal Sexual Conduct 1 (Sexual Contact-victim under 13)	8 *
609.343 subd.1(a)(b)(g)	Criminal Sexual Conduct 2	6
609.343 subd.1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2	8 *
609.344 subd. 1(a)	Criminal Sexual Conduct 3 (By definition perpetrator must be a juvenile)	unranked
609.344 subd. 1(b)(e)(f)	Criminal Sexual Conduct 3	5
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 3	8
609.345 subd. 1(a)	Criminal Sexual Conduct 4 (By definition perpetrator must be a juvenile)	unranked
609.345 subd. 1(b)(e)(f)	Criminal Sexual Conduct 4	4
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)	Criminal Sexual Conduct 4	6
609.3451 subd. 3	Criminal Sexual Conduct 5	4
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	3

* See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.

STATUTE	OFFENSE	SEVERITY LEVEL
609.355	Bigamy	unranked
609.365	Incest	unranked
609.375 subd. 2a	Nonsupport of Spouse or Child	1
609.377 subd. 3	Malicious Punishment of Child (2nd or subsequent violation)	4
609.377 subd. 4	Malicious Punishment of Child (bodily harm)	4
609.377 subd. 5	Malicious Punishment of Child (substantial bodily harm)	4
609.377 subd. 6	Malicious Punishment of Child (great bodily harm)	8
609.378	Child Neglect/Endangerment	1
609.385	Treason	unranked
609.39	Misprision of Treason	unranked
609.395	Obstructing Military Forces	unranked
609.396 subd. 2	Unauthorized Presence at Camp Ripley	3
609.42 subd.1 all sections	Bribery	4
609.425	Corrupting Legislator	unranked
609.445	Failure to Pay Over State Funds-over $2,500	3
609.445	Failure to Pay Over State Funds-$2,500 or less	2
609.455	Permitting False Claims Against Government - over $2,500	3
609.455	Permitting False Claims Against Government - $2,500 or less	2
609.465	Presenting False Claims to Public Officer - over $2,500	3
609.465	Presenting False Claims to Public Officer - $2,500 or less	2
609.466	Medical Assistance Fraud - over $2,500	3
609.466	Medical Assistance Fraud - $2,500 or less	2
609.48 subd. 4(1)	Perjury - Felony Trial	5
609.48 subd. 4(2)	Perjury - Other Trial	4

STATUTE	OFFENSE	SEVERITY LEVEL
609.485 subd. 4 (a)(1)	Escape	3
609.485 subd. 4 (a)(2)	Escape, Mental Illness	1
609.485 subd. 4(b)	Escape with Violence	8
609.486	Bullet - Resistant Vest During Crime	1
609.487 subd. 3	Fleeing Peace Officer	1
609.487 subd. 4(a)	Fleeing Peace Officer (resulting in death)	10
609.487 subd. 4(b)	Fleeing Peace Officer (great bodily harm)	6
609.487 subd. 4(c)	Fleeing Peace Officer (substantial bodily harm)	4
609.49	Failure to Appear in Court	1
609.495 subd. 1	Aiding an Offender to Avoid Arrest	1
609.495 subd. 3	Accomplice After the Fact	unranked
609.496; 609.497	Concealing Criminal Proceeds; Engaging in Business	unranked
609.4971	Warning Subject of Investigation	unranked
609.4975	Warning Subject of Surveillance or Search	unranked
609.498 subd. 1a	Tampering with a Witness 1st Degree	5
609.498 subd. 1b	Tampering with a Witness Aggravated 1st Degree	9
609.50 subd. 2	Obstructing Legal Process, Arrest, or Firefighting	3
609.52 all sections	Theft of Public Funds - over $2,500	3
609.52 all sections *	Theft of Public Funds - $2,500 or less	2
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)	Theft - over $2,500	3
609.52 subd. 2(1)	Theft - $2,500 or less	2
609.52 subd. 2 (1) *	Theft of a Motor Vehicle	4**

* Includes offenses sentenced according to M.S. § 609.52, subd. 3 (3) (d).
* Includes offenses sentenced according to M.S. § 609.52, subd. 3 (3) (d).

STATUTE	OFFENSE	SEVERITY LEVEL
609.52 subd. 2(2)	Taking Pledged Property - over $2,500	3
609.52 subd. 2(2)	Taking Pledged Property - $2,500 or less	2
609.52 subd. 2(3) with subd. 3(1)	Theft by Check/False Representation - over $35,000	6
609.52 subd. 2(3)(i)	Theft by Check - $2,501 - $35,000	3
609.52 subd. 2(3)(i)	Theft by Check - $2,500 or less	2
609.52 subd. 2(3)(ii-v)	Theft by False Representation - $2,501-$35,000	3
609.52 subd. 2(3)(ii-v)	Theft by False Representation - $2,500 or less	2
609.52 subd. 2(4) with subd. 3(1)	Theft by Trick - over $35,000	6
609.52 subd. 2(4)	Theft by Trick - $2,501-$35,000	3
609.52 subd. 2(4)	Theft by Trick - $2,500 or less	2
609.52 subd. 2(5)	Temporary Theft - over $2,500	3
609.52 subd. 2(5)	Temporary Theft - $2,500 or less	2
609.52 subd. 2(6)	Refusing to Return Lost Property - over $2,500	3
609.52 subd. 2(6)	Refusing to Return Lost Property - $2,500 or less	2
609.52 subd. 2(7)	Theft from Coin Operated Machine - over $2,500	3
609.52 subd. 2(7)	Theft from Coin Operated Machine - $2,500 or less	2
609.52 subd. 2(8)	Theft of Trade Secret	3
609.52 subd. 2(9)	Theft of Leased Property - over $2,500	3
609.52 subd. 2(9)	Theft of Leased Property - $2,500 or less	2
609.52 subd. 2(10)&(11)	Altering Serial Number - over $2,500	3
609.52 subd. 2(10)&(11)	Altering Serial Number - $2,500 or less	2
609.52 subd. 2(12)	Theft of Cable TV Services - over $2,500	3
609.52 subd. 2(12)	Theft of Cable TV Services - $2,500 or less	2
609.52 subd. 2(13)	Theft of Services - over $2,500	3

** See Section *II.A.07* for commentary on motor vehicle offense severity levels.

STATUTE	OFFENSE	SEVERITY LEVEL
609.52 subd. 2(13)	Theft of Services - $2,500 or less	2
609.52 subd. 2(14)	Theft of Telecommunication Services - over $2,500	3
609.52 subd. 2(14)	Theft of Telecommunication Services - $2,500 or less	2
609.52 subd. 2(15)(16) with subd. 3(1)	Diversion of Corporate Property - over $35,000	6
609.52 subd. 2(15)(16)	Diversion of Corporate Property - $2,501 - $35,000	3
609.52 subd. 2(15)(16)	Diversion of Corporate Property - $2,500 or less	2
609.52 subd. 2(17) *	Motor Vehicle Use without Consent	3**
609.52 subd. 3(1)	Theft of Firearm	4
609.52 subd. 3(2)	Theft of Incendiary Device	4
609.52 subd. 3(2)	Theft of Controlled Substances	4
609.52 subd. 3(3)(b)	Theft of Controlled Substances	3
609.52 subd. 3(3)(d)(iii)	Theft from an Abandoned or Vacant Building - $500 or less	1
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-$1,000-$2,500	5
609.525 all sections	Bringing Stolen Goods into State-$301-$999	4
609.526, (1)	Precious Metal Dealers (over $2,500)	6
609.526, (1) & (2)	Precious Metal Dealers ($301-$2,500)	4
609.526	Precious Metal Dealers (over $300-second or subsequent)	6
609.527 subd. 3(3)	Identity Theft	2
609.527 subd. 3(4)	Identity Theft	3
609.528 subd. 3(3)	Possession or Sale of Stolen or Counterfeit Check	2

* Includes offenses sentenced according to M.S. § 609.52, subd. 3 (3) (d).

** See Section *II.A.07* for commentary on motor vehicle offense severity levels.

STATUTE	OFFENSE	SEVERITY LEVEL
609.528 subd. 3(4)	Possession or Sale of Stolen or Counterfeit Check	3
609.53	Receiving Stolen Goods - over $2,500	3
609.53	Receiving Stolen Goods - $2,500 or less	2
609.53	Receiving Stolen Property (firearm)	4
609.535 subd. 2a(a)(1)	Dishonored Check (over $500)	2
609.54 all sections	Embezzlement of Public Funds - over $2,500	3
609.54 all sections	Embezzlement of Public Funds - $2,500 or less	2
609.551 all sections	Rustling of Livestock - over $2,500	3
609.551 all sections	Rustling of Livestock - $2,500 or less	2
609.561 all sections	Arson 1	8
609.562	Arson 2	5
609.563 all sections	Arson 3	3
609.5641 subd. 1	Wildfire Arson	2
609.576 subd. 1(a)	Negligent Fires - Great Bodily Harm	4
609.576 subd. 1(b)(3)	Negligent Fires - Damage Exceeds $2,500	2
609.576 subd. 2	Dangerous Smoking	3
609.582 subd.1(b)(c)	Burglary 1 w/Weapon or Assault	8
609.582 subd. 1(a)	Burglary 1 - of Occupied Dwelling	6 *
609.582 subd. 2(a)(b)	Burglary 2 - Dwelling/Bank	5
609.582 subd. 2(c)(d)	Burglary 2 - Pharmacy/Tool	4
609.582 subd. 3	Burglary 3 - Non Residential	4
609.586 subd. 2	Possession of Code Grabbing Devices	3
609.59	Possession of Burglary Tools	3
609.591 subd. 3(1)	Hinder Logging (great bodily harm)	3
609.594	Damage to Property – Critical Service Facilities, Utilities, and Pipelines	unranked
609.595 subd.1(1)	Damage to Property-Risk Bodily Harm	3

* See Section II. C. Presumptive Sentence to determine the presumptive sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
609.595 subd. 1(2)(3)(4)	Damage to Property-Over $250/Public Utility	2
609.595 subd. 1a (a)	Damage to Property Motivated by Bias	1
609.596 subd. 1	Killing or Harming a Public Safety Dog	unranked
609.597 subd. 3(3)	Assaulting or Harming a Police Horse	1
609.597 subd. 3(1) & (2)	Assaulting or Harming a Police Horse	unranked
609.611 all sections	Defrauding Insurer-over $2,500	3
609.611 all sections	Defrauding Insurer-$2,500 or less	2
609.612	Insurance Fraud – Employment of Runners	unranked
609.615 all sections	Defeating Security on Realty-over $2,500	3
609.615 all sections	Defeating Security on Realty-$2,500 or less	2
609.62 all sections	Defeating Security on Personalty-over $2,500	3
609.62 all sections	Defeating Security on Personalty-$2,500 or less	2
609.625 all sections	Aggravated Forgery-Non-Check	2
609.63 all sections	Simple Forgery	1
609.631 subd. 4(1)	Check Forgery-over $35,000	5
609.631 subd. 4(2)	Check Forgery-over $2,500	3
609.631 subd. 4(3)(a)	Check Forgery-$251-$2,500	2
609.631 subd. 4(3)(b)	Check Forgery-$250 or less	1
609.635	Obtaining Signature by False Pretense	2
609.64	Recording, Filing of Forged Instrument	2
609.645	Fraudulent Statements	1
609.65	False Certification by Notary Public	1
609.651 subd. 1 with 4(a)	State Lottery Fraud	1
609.651 subd. 1 with 4(b) and subd. 2 & 3	State Lottery Fraud	unranked
609.652	Fraudulent Drivers' Licenses and Identification Cards	1
609.66 subd. 1a(a)(1)	Firearm Silencer	2

STATUTE	OFFENSE	SEVERITY LEVEL
609.66 subd. 1a(a)(1)	Firearm Silencer (public housing, school or park zone)	3
609.66 subd. 1a(a)(2)&(3)	Discharge of Firearm (public housing, school or park zone)	2
609.66 subd. 1a(a)(2)	Discharge of Firearm (intentional)	2
609.66 subd. 1a(a)(3)	Discharge of Firearm (reckless)	1
609.66 subd. 1b	Furnishing Firearm to a Minor	2
609.66 subd. 1c	Furnishing a Dangerous Weapon	2
609.66 subd. 1d(a)	Dangerous Weapons on School Property	1
609.66 subd. 1e(a)	Drive-By Shooting (unoccupied motor vehicle or building)	3
609.66 subd. 1e(b)	Drive-By Shooting (toward a person or occupied motor vehicle or building)	8
609.66 subd. 1g	Weapon in Courthouse/Certain State Buildings	4
609.662 subd. 2(b)(1)	Duty to Render Aid (death or great bodily harm)	2
609.662 subd. 2(b)(2)	Duty to Render Aid (substantial bodily harm)	1
609.667	Remove or Alter Serial Number on Firearm	1
609.668 subd. 6	Explosive Devices/Incendiary Devices	6
609.67 subd. 2	Possession/Ownership of Machine and Shortbarreled Shotguns	3
609.671	Hazardous Wastes	unranked
609.686 subd. 2	Tampering w/ Fire Alarm System (results in bodily harm)	3
609.686 subd. 2	Tampering w/ Fire Alarm System (potential for bodily harm)	1
609.687 subd. 3(1)	Adulteration Resulting in Death	11
609.687 subd. 3(2)	Adulteration Resulting in Bodily Harm	4
609.687 subd. 3(3)	Adulteration	unranked
609.71 subd. 1	Riot 1	5
609.71 subd. 2	Riot 2	2

STATUTE	OFFENSE	SEVERITY LEVEL
609.712	Real/Simulated Weapons of Mass Destruction	unranked
609.713 subd. 1	Terroristic Threats-Violence Threat/Evacuation	4
609.713 subd. 2	Terroristic Threats-Bomb Threat	2
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm	1
609.748 subd. 6(d)	Violation of Restraining Order	4
609.749 subd. 3(a)(b)	Harassment/Stalking (aggravated violations)	4
609.749 subd. 4(a)	Harassment/Stalking (2nd or subsequent violations)	4
609.749 subd. 4(b)	Harassment/Stalking (3rd or subsequent violations)	5
609.749 subd. 5	Harassment/Stalking (pattern of conduct)	5
609.76 subd. 2	Sports Bookmaking	4
609.76 subd. 3, 4, 5, 6 & 7	Gambling Acts (cheating, certain devices prohibited; counterfeit chips; manufacture, sale, modification of devices; instruction)	unranked
609.763	Lawful Gambling Fraud	unranked
609.80 subd. 2	Cable Communication Systems Interference	1
609.82 all sections	Fraud in Obtaining Credit - over $2,500	3
609.82 all sections	Fraud in Obtaining Credit - $2,500 or less	2
609.821 subd. 2(1)(2)(5)(6)(7)(8)	Financial Transaction Card Fraud over $2,500	3
609.821 subd. 2(1)(2)(5)(6)(7)(8)	Financial Transaction Card Fraud $2,500 or less	2
609.821 subd. 2(3)(4)	Financial Transaction Card Fraud	1
609.821 subd. 3(1)(l)	Financial Transaction Card Fraud over $35,000	5
609.825 subd. 2	Bribery of Participant or Official in Contest	2
609.83	Falsely Impersonating Another	unranked
609.85 (1)	Dangerous Trespass, Railroad Tracks	3
609.851 subd. 2	False Traffic Signal	3
609.855 subd. 2(c)(1)	Interference with Transit Operator	1

STATUTE	OFFENSE	SEVERITY LEVEL
609.855 subd. 5	Discharge Firearm at Occupied Transit Vehicle/Facility	6
609.855 subd. 5	Discharge Firearm at Unoccupied Transit Vehicle/Facility	1
609.856	Police Radios during Commission of Crime	unranked
609.86	Commercial Bribery	4
609.88	Computer Damage-over $2,500	3
609.88	Computer Damage-$2,500 or less	2
609.89	Computer Theft over $2,500	3
609.89	Computer Theft-$2,500 or less	2
609.891	Unauthorized Computer Access	unranked
609.893 subd. 1	Telecommunications and Information Services Fraud - over $2,500	3
609.893 subd. 1	Telecommunications and Information Services Fraud - $2,500 or less	2
609.893 subd. 2	Telecommunications Fraud	2
609.894 subd. 3	Cellular Counterfeiting 2	1
609.894 subd. 4	Cellular Counterfeiting 1	2
609.895 subd. 3(a)	Counterfeited Intellectual Property	2
609.895 subd. 3(b)	Counterfeited Intellectual Property	1
609.904	Racketeering (RICO)	unranked
617.20	Abortion	unranked
617.22	Abortion	unranked
617.23 subd. 3	Indecent Exposure	4
617.241 subd. 4	Obscene Materials-Distribution	unranked
617.246	Use of Minors in Sexual Performance Prohibited	unranked
617.247	Possession of Pictorial Representation of Minors	unranked
624.713 subd. 1(a)	Certain Persons Not to Have Firearms	3
624.713 subd. 1(b)	Certain Persons Not to Have Firearms	6

STATUTE	OFFENSE	SEVERITY LEVEL
624.7132 subd. 15(b)	Transfer Pistol to Minor	2
624.714 subd. 1(a)	Pistol w/out Permit (subsequent violations)	1
624.7141 subd. 2	Transfer Pistol to Ineligible Person	2
624.7181 subd. 2	Assault Weapon in Public - Under 21	1
624.731 subd. 8(a)	Tear Gas and Tear Gas Compounds; Electronic incapacitation devices	3
624.732 subd. 2	Intentional Release of Harmful Substance	3
624.74	Metal Penetrating Bullets	unranked
626A.02 subd. 4;626A.03 subd.1(b)(ii); 626A.26 subd. 2(1)(ii)	Wire Communications Violations	unranked
626.556 subd. 6	Failure to Report	unranked
641.165 subd. 2(b)	Bring Dangerous Weapon into County Jail	4

INDEX

	Section
Attempts/Conspiracies/Sentence Modifiers	II.G
Addl. 3 Months for Custody Status	II.B.205
Attempted Murder First Degree	II.G
Controlled Substance Offenses	II.G
Criminal Sexual Conduct 1	II.G
Criminal Sexual Conduct 2	II.G
Gang Related Offense	II.G
Mandatory Sentences	II.G
Presumptive Sentence-Computation	II.G, II.G.01, II.G.02
Solicitation of Juveniles	II.G
Solicitation of Mentally Impaired	II.G
Burglary-First Degree, Occupied Dwelling	
Presumptive Sentence	II.C
Certified Juveniles	III.D
Concurrent/Consecutive Sentences	II.F
Aggregated-Consecutive Sentences	II.F.02
Assault (Felony) Committed by Inmate Serving Executed Term of Imprisonment	II.F, II.F.03
Computation-Permissive	II.F, II.F.02, II.F.04
Computation-Presumptive	II.F, II.F.02, II.F.03
Consecutive Sentence to an Indeterminate	II.F, II.F.05
Criminal Sexual Conduct 1-4 w/ Force or Violence	II.F#6
Departures	II.F, II.F.01, II.F.04
Determining Concurrent/Consecutive	II.F, II.F.03
Escape-Executed Sentence	II.F, II.F #5, II.F.01, II.F.03, II.F.04
Escape-Non-Executed Prison Sentence	II.F #3-4, II.F.04
Fleeing a Peace Officer in a Motor Vehicle	II.F #6
Gang Related Offenses	II.F, II.F.02
Offenders Serving or on Supervised Release, or on Escape Status from, Executed Prison Sentences	II.F, II.F.01, II.F.03
Institutional Records Officer	II.F.02
Mandatory Sentences	II.F, II.F.02
Metal Penetrating Bullets	II.F.06
Order of Sentencing	II.F, II.F.02
Permissive	II.F
Person Crimes	II.F #1-2, II.F.04
Presumptive	II.F
Stayed Sentences	II.F
Conditions of Stayed Sentence	III.A.2

	Section
Consecutive Sentences	
(see Concurrent/Consecutive Sentences)	
Conspiracies	
(see Attempts)	
Crime Motivated by Bias	II.D.2.b(11), II.D.206
Criminal History	II.B
Classification of Prior	II.B.04
Computation-Score	II.B, II.B.7
Custody Status Point	II.B.2, II.B.201-205
Additional 3 months	II.B.2, II.B.203-205
DWI (Gross Misd.) offenses	II.B.202
Exclusions	II.B.201, II.B.202
Probation Before Conviction (M.S. § 152.18)	II.B.201
Decay (Felony)	II.B.1e, II.B.106
Decay (Misdemeanor)	II.B.3c, II.B.304
Decay (Stay of Imposition)	II.B.1e, II.B.106
Enhanced Felonies	II.B.6
Excess of 6 Points	II.B.2, II.B.203-205
Attempt-Conspiracy	II.B.205
Felony Points	II.B.1
Computation-Weighting	II.B.1, II.B.101-103
Attempts/Conspiracies	II.B.101
Determining Severity of Prior Offenses	II.B.1a, II.B.101
Multiple Current Offenses ("Hernandizing")	II.B.101
Multiple Sentences-Burglary, Kidnapping	II.B.102
Multiple Sentences-Multiple Victims	II.B.103
Partial Points (not used)	II.B.101
Repealed/Redefined Prior Offenses	II.B.101
Decay	II.B.1e, II.B.106
Extended Jurisdiction Juvenile (EJJ)	II.B.1, II.B.109, II.B.2 II.B.201, II.B.401
Federal Felony Crimes	II.B.503
Misdemeanor Sentences	II.B.1d, II.B.104
Out-of-State Convictions	II.B.5, II.B.501-504
Probation Before Conviction (M.S. § 152.18)	II.B.108
Single Course of Conduct	
Single Victim	II.B.1b, II.B.101
Multiple Sentences-Burglary, Kidnapping	II.B.1b, II.B.102
Multiple Victims	II.B.1c, II.B.103
Stays of Imposition	II.B.1, II.B.101, II.B.105
Youth Corrections Board	II.B.107
Fine as Only Sanction - Classification of Prior	II.B.04
Fleeing a Peace Officer in a Motor Vehicle	II.B.301

	Section
Juvenile Points	II.B.4
Age of Offender	II.B.4c-d, II.B.404
Computation	II.B.4e, II.B.405
Multiple Points	II.B.4e, II.B.405-406
Offenses Included	II.B.4a-c, II.B.402-404
Single Course of Conduct	II.B.407
Misdemeanor/Gross Misdemeanor Points	II.B.3
Alcohol Consumption/Purchase by persons under 21	II.B.306
Computation	II.B.3, II.B.301
Decay	II.B.3c, II.B.304
DWI (Misd./Gr. Misd.) Convictions	II.B.3, II.B.301-302
Misdemeanor/Gross Misdemeanor Offense List	
One Point Limit	II.B.3, II.B.302
Exception for Prior DWI offenses	II.B.3, II.B.301-302
Petty Misdemeanors	II.B.305
Single Course of Conduct	II.B.3b, II.B.303, II.B.307
Traffic Offenses	II.B.3, II.B.301
Which Offenses Included	II.B.3a, II.B.302
Out-of-State/Foreign Convictions	II.B.5
Order of Sentencing	II.B.1, II.B.101
Criminal Vehicular Homicide and Injury	
Prior DWI (Misd./Gr. Misd.) Offenses	II.B.3, II.B.301-302
Date of Offense	II.A.02, II.B.1a, II.B.101
Decay (see Criminal History)	
Definition of Terms	
"Before current sentencing"	II.B.101
"Community Work Orders"	
"Completion of any incarceration arising out of prior sentence"	II.F.05
"Day Fines"	
"Departure"	II.C, II.C.02-05
"Executed Sentence"	II.C, II.C.01-04
"Good Time"	
"Presumptive Fixed Sentence"	
"Sale"	II.C.07
"Stay of Imposition/Stay of Execution"	
"Supervised Release"	
"Term of Imprisonment"	
Departures	II.C, II.D
Aggravating Factors	II.D.2b
Alleged Elements as Factors	II.D.103

	Section
"Career Offender" Sentencing Provision	II.D.2b(9), II.D.204
"Dangerous Offender" Sentencing Provision	II.D.2b(8), II.D.204
Departure Definition	II.C, II.C.02-05
Exclusion of Gang Related Activity	II.D.205
Factors not to be used for Departure	II.D.1, II.D.101-103
Factors that may be used for Departure (Nonexclusive List)	II.D.2
Felony Convictions Sentenced as Misdemeanor	II.C.05
Mitigating Factors	II.D.2a
Non-exclusive List of Reasons	II.D.2
"Patterned Sex Offender" Sentencing Provision	II.D.2b(7), II.D.204
Plea Agreements	II.D.04
Presumptive Consecutive Sentences	II.F, II.F.01-03
Second or Subsequent Sex Offense Stayed Sentences	II.E.04
Use of Constitutional Rights for Departure	II.D.1e, II.D.102
Written Reasons	II.C, II.D
M.S. §609.11, Sentencing Without Regard To	II.E, II.E.03
Driving While Impaired – First Degree (Felony)	
Conditional Release	II.E
Custody Status Point	II.B.202
Enhanced Felonies	II.B.6, II.B.601
Mandatory Sentences	II.E, II.E.01
Presumptive Sentences-2nd or Subsequent First Degree (Felony) DWI	II.C
Prior DWI (Misd./Gr. Misd.) Offenses	II.B.3, II.B.301-302
Effective Date	
Guidelines	II
Modifications to Guidelines and Commentary	III.F
Executed Sentences	
Definition	II.C.02
Examples Broken Down by Specified Minimum Term of Imprisonment and Maximum Period of Supervised Release	
Extended Jurisdiction Juvenile (EJJ)	
(see Criminal History)	
Federal Felony Crimes	
(see Criminal History - Felony Points)	
Forgery Related Offense List	
Gangs (Crimes Committed for Benefit of)	II.A, II.D.205, II.F,

	Section
	II.F.02, II.G
Grid	IV
Dispositional Line	II.C, II.C.01-02
Durations (Cell Numbers)	II.C, II.C.01-02
Jail Credit	III.C
Consecutive Sentences	III.C.2, III.C.03
Electronic Monitoring	III.C.04
Good Time Computation	III.C.06
Huber Law Credit	III.C.4, III.C.05
Residential Treatment	III.C.04
Mandatory Sentences	II.E
Assault in the Second Degree	II.E, II.E.02, II.E.03
Attempt or Conspiracy	II.G
Certain Persons Not To Have Firearms	II.E.03
Dangerous Repeat Offenders	II.E
Drive-By Shootings	II.E.03
Driving While Impaired (Felony – 2nd or Sub.)	II.E, II.E.01
Mandatory Period of Conditional Release	II.E
Drug Offenses Involving Dangerous Weapons	II.E
First Degree Murder	II.E
Life Sentences	II.E
Metal Penetrating Bullets	II.F.06
Presumptive Disposition	II.E.02
Presumptive Duration	II.E, II.E.02
Sex Offenses	II.E, II.E.04-05
Mandatory Period of Conditional Release	II.E.05
Stayed Sentences	II.E.04
Types of Offenses	II.E.01
Weapons Offenses: Sentencing w/o Regard to M.S. §609.11	II.E, II.E.03
Misdemeanor and Gross Misdemeanor Offense List	
Misdemeanor Sentences	
For a Current Felony Offense	II.C.05
From a Felony Conviction	II.B.1d, II.B.104
From a Stay of Imposition	II.B.1d, II.B.104, II.B.3c
Modifications to Guidelines and Associated Commentary-Effective Date	III.F

	Section
Multiple Convictions	
Point Limit	II.B.1b-c, II.B.102-103
Single Course of Conduct	
Juvenile	II.B.407
Misdemeanor	II.B.3b, II.B.303, II.B.307
Felony	II.B.1b-c,II.B.102-103
Multiple Sentencing	
Attempted Crimes w/ Other Crimes	II.C.06
Numerical Reference of Felony Statutes	
Offense Dates, Use of	II.A.02, II.B.1a, II.B.101
Offenses Listed by Statute Number	
Offense Severity, Determining	II.A
Gangs (Crimes Committed for Benefit of)	II.A
Knowing Transfer of Communicable Disease	II.A.08
Theft of a Motor Vehicle/Motor Vehicle Use w/o Consent	II.A.07
Unproven Behavior	II.A.01
Unranked Offenses	II.A.03-06
Offense Severity Reference Table	V
Out of State Convictions	II.B.5
Plea Agreements	II.D.04
Presentence Mental/Physical Exam for Sex Offenders	III.E
Presumptive Sentences	II.C
Attempts/Conspiracies	II.G
Assault (Felony) Committed by Inmate Serving Executed Term of Imprisonment	II.C, II.F, II.F.03
Computation	II.C, II.C.01-04
Criminal Sexual Conduct 1	II.C, II.C.08
Driving While Impaired (Felony – 2nd or Sub.)	II.C
Escape	II.C, II.F, II.F.01, II.F.03-04
Exceeds Statutory Maximum Sentence	II.H
Mandatory Sentences	II.E
Metal Penetrating Bullets	II.F.06
Presumptive Commitment Despite Severity Level	II.C
Assault (Felony) Committed by Inmate	

	Section
Serving Executed Term of Imprisonment	II.C
Burglary of Occupied Dwelling	II.C
Driving While Impaired (Felony – 2nd or Sub.)	II.C
Drug Offenses-Sev. Level VI, Sale Cocaine	II.C, II.C.07
Escape from Executed Sentence	II.C
Purposes and Principles - Statement	I
Revocations	III.B
Jail Credit	III.C
Huber	III.C.4, III.C.05
Sentencing Procedures	
Conditions of Stayed Sentences	III.A.2
Consecutive Sentences	II.F
Lengths of Stayed Sentences	III.A.102
Method of Granting Stayed Sentence	III.A.1, III.A.101
Multiple Convictions-Single Course of Conduct	II.B.101-103
Multiple Current Offenses	II.B.101-103
Order of Sentencing	II.A.02, II.B.1, II.B.101
Revocation of Stayed Sentence	III.B
Stay of Execution	II.C.03
Stay of Imposition	II.C.04
Severity Level	
Gangs (Crimes Committed for Benefit of)	II.A
Offense Severity, Determining	II.A
Offense Severity Reference Table	
Offenses Listed by Statute Number	
Unranked Offenses	II.A.03-06
Solicitation of Juveniles	II.G
Solicitation of Mentally Impaired	II.G
Theft of Motor Vehicle/Motor Vehicle Use Without Consent	II.A.07
Theft Offense List	
Unranked Offenses	II.A.03-06
Unranked Offense List	II.A.03
Inadvertently Unranked Offenses	II.A.06
Youth Conservation Commission/ Youth Corrections Board	II.B.107