

Minnesota Sentencing Guidelines Commission

Adopted Modifications to the Sentencing Guidelines and Commentary Effective August 1, 2010

A. New and Amended Crimes Passed by the 2010 Legislature – Effective August 1, 2010

1. Dangerous weapons on school property

Adopted July 22, 2010 – The commission adopted a proposal raising the severity level for possession of a dangerous weapon on school property to severity level 4.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

I	Dangerous Weapons on School Property – 609.66, 1d(a)
IV	<u>Dangerous Weapons on School Property - 609.66, subd. 1d(a)</u>

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.66 subd. 1d(a)	Dangerous Weapons on School Property	4 <u>4</u>

2. Identity theft

Adopted July 22, 2010 – The commission adopted a proposal ranking unlawful possession or use of scanning device or reencoder at severity level 2.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

II	<u>Unlawful possession or use of scanning device or reencoder - 609.527, subd. 5b</u>
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NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
<u>609.527, subd. 5b</u>	<u>Unlawful possession or use of scanning device or reencoder</u>	<u>2</u>

3. Domestic abuse-related provisions

Adopted July 22, 2010 – The commission adopted a proposal to make technical modifications to domestic abuse-related offenses.

Adopted Sentencing Guidelines Modifications:

V. OFFENSE SEVERITY REFERENCE TABLE

V	<p>Harassment/Stalking (third or subsequent violations) – 609.749, subd. 4(b) Harassment/Stalking (pattern of <u>stalking</u> harassing conduct) - 609.749, subd. 5</p>
IV	<p>Harassment/Stalking (aggravated violations) - 609.749, subd. 3(a),(b) Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4(a)</p> <p>Violation of a Domestic Abuse No Contact Order – <u>629.75, subd. 2(d)</u> 518B.01, subd. 22(d)</p>

VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

609.749, subd. 3	Harassment/Stalking (Aggravated Violations)
609.749, subd. 4	Harassment/Stalking (Subsequent Violations)
609.749, subd. 5	Harassment/Stalking (Pattern of Conduct)
<u>629.75, subd. 2(d)</u> 518B.01, subd. 22(d)	Violation of a Domestic Abuse No Contact Order

NUMERICAL REFERENCE OF FELONY STATUTES

609.749 subd. 3(a)(b)	Harassment /Stalking (aggravated violations)	4
609.749 subd. 4(a)	Harassment /Stalking (2 nd or subsequent violations)	4
609.749 subd. 4(b)	Harassment /Stalking (3 rd or subsequent violations)	5
609.749 subd. 5	Harassment /Stalking (pattern of conduct)	5
<u>629.75, subd. 2(d)</u> 518B.01 subd. 22(d)	Violation of a Domestic Abuse No Contact Order	4

**** Targeted Misdemeanor List**
(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Order for Protection Violation *
518B.01; 629.75

*According to the MN Bureau of Criminal Apprehension, this includes violations of domestic abuse no contact orders under M.S. § 518B.01, subd. 22, which was re-codified to M.S. § 629.75, effective August 1, 2010 (2010 Minn. Session Laws, Ch, 299, section 14).

Comment Section II.D

II.D.206. *The aggravating factor involving bias motivation under Section II.D.2.b.(11) 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.*

** Language from other adopted modifications is not reflected.

4. Third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities

Adopted July 22, 2010 – The commission considered amendments made to third- and fourth-degree criminal sexual conduct – employees of secure treatment facilities (M.S. §§ 609.344, subd. 1(m) and 609.345, subd. 1(m)) and adopted a proposal to maintain the current severity level rankings and maintain the list of offenses eligible for consecutive sentencing.

B. Non-Legislative Modifications – Effective August 1, 2010

1. Modify the Criminal History Policy for Misdemeanor and Gross Misdemeanor Offenses

Adopted July 23, 2009 – The commission adopted a proposal to replace the Misdemeanor/Gross Misdemeanor List with a policy that counts all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs).

Adopted Sentencing Guidelines Modifications:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and for each non-traffic gross misdemeanor conviction and for each gross misdemeanor driving while impaired or refusal to submit to a chemical test case 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 operation or first degree (felony) driving while impaired: previous violations of Minn. Stats. §§section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 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 or criminal vehicular homicide or operation violations.
 - a. Only convictions of statutory misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case 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. Any gross misdemeanor convictions resulting in misdemeanor sentences for offenses not on the targeted misdemeanor list provided in Minn. Stat § 299C.10, subd. 1(e), shall not be used to compute units.

* ~~b.~~ c. 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.

* ~~e.d.~~ 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.302.** 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 operation 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 operation or first degree (felony) driving while impaired.~~

~~**II.B.303** **II.B.302.** 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.~~

~~**II.B.304.** 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~~

* Language from other adopted modifications is not reflected.

~~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.305 II.B.303.** 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 on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines.~~

~~**II.B.306 II.B.304.** The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21, 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 or criminal vehicular homicide or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.~~

~~**II.B.307.** 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.308~~ **II.B.305.** *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.309~~ **II.B.306.** *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.310~~ **II.B.307.** *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.311.~~ *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.312~~ **II.B.308.** *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.*

* Language from other adopted modifications is not reflected.

Deletion of the Misdemeanor and Gross Misdemeanor Offense List:

* ~~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.

~~Animal Fighting—Admission to an animal fight (gross misdemeanor)
343.31 (c)~~

~~Arson in the Fourth Degree
609.5631~~

~~Assault in the Fourth Degree
609.2231, subd. 1, 2a, 4, 5, 6, & 7~~

~~Assault in the Fifth Degree
609.224~~

~~Burglary in the Fourth Degree
609.582~~

~~Carrying Pistol
624.714~~

~~Carrying a Pistol While Under the Influence of Alcohol or a Controlled
Substance
624.7142, subd. 6(a)(b)~~

~~Certain Persons Not to Possess Firearms
624.713, subd. 2~~

~~Check Forgery
609.631~~

~~Computer Encryption
609.8912~~

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

~~Contributing to Status as a Juvenile Petty Offender or Delinquency
260B.425~~

~~Counterfeiting of Currency
609.632~~

~~Criminal Abuse of Vulnerable Adult (bodily harm)~~

* Language from other adopted modifications is not reflected.

~~609.2325, subd. 3 (a) (4)~~

~~Criminal Sexual Conduct 5th Degree
609.3451~~

~~Criminal Vehicular Homicide or Operation (bodily harm)
609.21, subd. 1a(d)~~

~~Damage to Property
609.595~~

~~Dangerous Dogs — Subsequent violations (gross misdemeanor)
347.55 (c)~~

~~Dangerous Dogs — Dog ownership prohibited (gross misdemeanor)
347.55 (d)(e)~~

~~Dangerous Weapons
609.66~~

~~Dealers in Scrap Metal; Records, Reports, and Registration
325E.21~~

~~Disruption of Funeral Services
609.504~~

~~Domestic Assault
609.2242, subd. 1 & 2~~

~~Emergency Calls and Communications
609.78, subd. 1~~

~~Emergency Calls and Communications — Interference (gross
misdemeanor)
609.78, subd. 2~~

~~Facilitating Access to a Computer Security System (gross misdemeanor)
609.8913~~

~~Fleeing a Police Officer
609.487~~

~~Furnishing Liquor to Persons Under 21
340A.503~~

~~Fraudulent or Improper Financing Statements
609.7475~~

~~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~~

~~Predatory Offender Carrying a Weapon
624.714, subd. 24~~

~~Receiving Stolen Property
609.53~~

~~Registration of Predatory Offenders
243.166, subd. 5~~

~~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~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline—Without
claim of right or consent (gross misdemeanor)
609.6055, subd. 2(a)~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline—
Underground structure not open to the public (gross misdemeanor)
609.6055, subd. 2(b)~~

~~Unauthorized Computer Access
609.891~~

~~Violation of Harassment Restraining Order
609.748~~

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

Add the Targeted Misdemeanor List:

**** Targeted Misdemeanor List***
(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Driving While Impaired

169A.20

Order for Protection Violation

518B.01

Fifth-Degree Assault

609.224

Domestic Assault

609.2242

Interference with Privacy

609.746

Harassment or Restraining Order Violation

609.748

Indecent Exposure

617.23

* Language from other adopted modifications is not reflected.

2. Modify the Custody Status Policy Related to Gross Misdemeanor Offenses

Adopted July 23, 2009 – The commission adopted a proposal to change the policy for a gross misdemeanor custody status point that applies a point for all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs). This will make it consistent with the policy change for handling misdemeanor and gross misdemeanor offenses in criminal history.

Adopted Sentencing Guidelines Modifications:

- * 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 pending sentencing, following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e); or

Comment

II.B.202. *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 non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e)~~, 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.*

II.B.203. *It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, ~~or non-traffic gross misdemeanor, gross~~*

* Language from other adopted modifications is not reflected.

~~*misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*~~

3. Modify the Dates Used for Misdemeanors and Gross Misdemeanor Decay

Adopted July 23, 2009 – The commission adopted a proposal to change the start-date and end-date used to calculate the misdemeanor and gross misdemeanor decay to make it uniform with the dates used for felony decay.

Adopted Sentencing Guidelines Modifications:

3. Subject to the conditions listed below, the offender is assigned 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 date of discharge from or expiration of the sentence, to the date of the current offense. ~~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.309. The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses; however, given that these offenses are less serious, the decay period is 10 years rather than 15 years. 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*

* Language from other adopted modifications is not reflected.

~~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.~~

4. Military veterans

Adopted July 22, 2010 – The commission adopted a proposal to add sentencing guidelines language in Section III, related to military veterans.

Adopted Sentencing Guidelines Modifications:

F. Military Veterans: The Commission recognizes that the 2008 Legislature established a provision in law relating to defendants who are military veterans which states:

“(a) When a defendant appears in court and is convicted of a crime, the court shall inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States. (b) If the defendant is currently serving in the military or is a veteran and has been diagnosed as having a mental illness by a qualified psychiatrist or clinical psychologist or physician, the court may:

(1) order that the officer preparing the report under subdivision 1 consult with the United States Department of Veterans Affairs, Minnesota Department of Veterans Affairs, or another agency or person with suitable knowledge or experience, for the purpose of providing the court with information regarding treatment options available to the defendant, including federal, state, and local programming; and

(2) consider the treatment recommendations of any diagnosing or treating mental health professionals together with the treatment options available to the defendant in imposing sentence.” (See, Minn. Stat. § 609.115, subd. 10.)

F. G. 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.

5. Prior controlled substance offenses

Adopted July 22, 2010 – The commission adopted a proposal to modify sentencing guidelines, Section II.C, clarifying that a prior controlled substance conviction or stay of adjudication cannot “trigger” a prison sentence for a subsequent first- through third-degree controlled substance offense after 10 years have passed; consistent with M.S. § 152.01, subd. 16a.

Adopted Sentencing Guidelines Modifications:

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid....

When the current conviction offense is a first, second, or third-degree controlled substance 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 a similar conviction or 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 provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. ~~A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from convictions and dispositions under Minn. Stat. § 152.18.~~ A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence orthe stay of adjudication (Minn. Stat. §152.01 Subd.16a)....

6. Exceptions to “Hernandez” criminal history policy

Adopted December 10, 2009 – The commission adopted a proposal to amend the criminal history section to consistently reference the three exceptions to the “Hernandez” rule and amend the commentary to clarify its actions are deliberate. The Commission’s proposal is consistent with a recent MN Supreme Court case.

Adopted Sentencing Guidelines Modifications:

Comment

....

II.B.107. The Commission established policies to deal with several specific situations which arise under Minnesota law: a conviction under Minn. Stat. § 152.137, under which persons convicted of methamphetamine-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior; 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; and 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. §§ 152.137, 609.585, or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes 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. §§ 152.137, 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission’s decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

3. Subject to the conditions listed below,
- * b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, no offender shall be assigned more than one unit.

Comment

* ***II.B.308.*** *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. §§ 152.137, 609.585 or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes 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. References are made to felony convictions under Minn. Stats. §§ 152.137, 609.585 and 609.251, in the event that they result in a misdemeanor or gross misdemeanor sentence.*

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

~~*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.312.*** *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*~~

* Language from other adopted modifications is not reflected.

same policies that apply to felony convictions and juvenile adjudications.

Comment

II.B.408. *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. §§ 152.137, 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.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

7. Minimum term of prison for certain repeat sex offenders

Adopted December 10, 2009 – The commission adopted a proposal to amend the presumptive sentence section to be consistent with a recent MN Supreme Court decision related to certain repeat sex offenders.

Minn. Stat. § 609.3455, subd. 5, mandates life sentences with minimum terms of prison for certain repeat sex offenders. The law indicates that an offender must serve a minimum term of prison before being considered for release and that the prison term is “based on the sentencing guidelines or any applicable mandatory minimum sentence,…” (2005 Minn. Stat. § 609.3455, subd. 5.)

In a recent MN Supreme Court case, the procedures which should be used to determine the minimum term of imprisonment were in question. It was decided that it was proper to base the minimum prison term on the presumptive sentence absent the mandatory life sentence imposed by Minn. Stat. § 609.3455, subd. 4.

Adopted Sentencing Guidelines Modification:

....

Pursuant to M.S. § 609.3455, certain sex offenders are subject to mandatory life sentences. The sentencing guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release sentences under subdivision 2 of that statute. For offenders subject to life with the possibility of release sentences under subdivisions 3 and 4 of that statute, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines presumptive sentence as determined in Section II.C, or any applicable mandatory minimum sentence not contained in M.S. § 609.3455, that must be served before the offender may be considered for release.

Comment

....

II.C.08. *The 2005 Legislature enacted statutory changes allowing life sentences with the possibility of release for certain sex offenders. The statute requires the sentencing judge to pronounce a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum not contained in M.S. § 609.3455, that the offender must serve before being considered for release. All applicable sentencing guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable in the determination of the minimum term of imprisonment for these sex offense sentences. See, State v. Hodges, 770 N.W.2d 515 (Minn. 2009).*

C. Technical Modification to the Sentencing Guidelines – Effective August 1, 2010

1. Aggravating factors for solicitation or promotion of prostitution; sex trafficking (M.S. § 609.322, subd. 1(b))

Adopted July 22, 2010 – The commission adopted a proposal to make an entry on the numerical reference of felony statutes table for aggravating factors for solicitation or promotion of prostitution; sex trafficking. The reference directs readers to section II.G, which describes how to apply the four-year enhancement for the offense.

Adopted Sentencing Guidelines Modifications:

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
<u>609.322 subd. 1(b)</u>	<u>Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking</u>	<u>see note *</u>

* See Guidelines Section II.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.