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**Minnesota Sentencing Guidelines Commission**  
Clarify the Policy for Using Non-Minnesota Convictions  
in the Criminal History Score  
June 19, 2014

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**Description:** Staff regularly responds to questions about how to use non-Minnesota convictions in the criminal history score. Staff felt that the current language in §2.B.5 does not emphasize the role that the court plays in equating non-Minnesota offenses to Minnesota offenses nor does it clearly outline the steps involved in equating a non-Minnesota offense.

**Staff Recommendation:** Staff recommends revising the 2014 Minn. Sentencing Guidelines by clarifying the language in § 2.B.5, as shown below. Please note that section headers and paragraph headers are underlined in the Guidelines.

**Redrafted Language showing §2.B.5 (in its entirety).**

5. Convictions from Jurisdictions other than Minnesota.

- a. In General. The offense definitions in effect when the offense was committed govern the designation of convictions from jurisdictions other than Minnesota as felonies, gross misdemeanors, or misdemeanors. The court must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score. The court should consider, but is not limited to, the factors in paragraphs b through e, below. Sections 2.B.1 through 2.B.7 govern the use of these convictions.
- b. Offense Equivalent-How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The court makes the final determination of the Minnesota offense that is equivalent to the non-Minnesota offense. Where In which section to place count the non-Minnesota offense in criminal history depends on:
- whether the non-Minnesota offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; and
  - the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota

would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the offense was committed govern the designation of convictions from jurisdictions other than Minnesota as felonies, gross misdemeanors, or misdemeanors.

- c. Assigning Felony Weights. Section 2.B.1 governs the weight of a prior felony conviction from a jurisdiction other than Minnesota, and must be based on the severity level of the equivalent Minnesota felony offense.
- d. Federal Offenses; No Minnesota Equivalent. Federal felony offenses that received a sentence that in Minnesota would be a felony-level sentence, but for which no comparable Minnesota offense exists, must receive a weight of one in computing the criminal history score.
- e. Juvenile Offenses from other Jurisdictions. Minnesota law governs the inclusion of a prior felony offense from jurisdictions other than Minnesota committed by an offender who was under 18 years old in the juvenile section or adult section of the criminal history score. The offense should be included in the juvenile history section only if it meets the requirements in section 2.B.4. The prior can be included in the adult history section only if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it had occurred in Minnesota.

*Comment*

**2.B.501.** *Convictions from jurisdictions other than Minnesota 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.*

**2.B.502.** *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history score. No uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor" exists. Therefore, the Commission recognizes that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined by current Minnesota offense definitions and sentencing policies, except as provided in section 2.B.7. For example, an assault with a dangerous weapon committed in Texas that received a 365-day sentence would*

*be given one gross misdemeanor unit due to the sentence length despite being the equivalent by definition of a Minnesota felony second-degree assault.*

**2.B.503.** *For prior non-Minnesota controlled substance convictions, the amount and type of the controlled substance should be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense.*

**2.B.504.** *A non-Minnesota conviction committed by a juvenile can only be included in the adult section of the criminal history score if the offender would have been certified as an adult under Minnesota law. See State v. Marquetti, 322 N.W.2d 316 (Minn. 1982).*