

Minnesota Sentencing Guidelines and Commentary

With amendments effective August 1, 2011

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TEXT OF GUIDELINES AND COMMENTARY

1. 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.

2. 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 grids represent 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 Minnesota Statutes, section 609.2241 - Knowing Transfer of Communicable Disease, 609.229, subdivision 3(a) - Crime Committed for Benefit of a Gang, 609.3453 - Criminal Sexual Predatory Conduct, or 609.714 - Offense in Furtherance of Terrorism, the severity level is the same as that for the underlying crime with the highest severity level.

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 Minnesota Statutes, section 609.52, subdivision 3, clause (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 subdivision 1(h)(iii) of first degree criminal sexual conduct, the date of the conviction offense must be determined by the factfinder. See, *State v. DeRosier*, 719 N.W.2d 900 (Minn. 2006).

For persons sentenced under Minnesota Statutes, section 609.52, subdivision 3a, for which a violation involves a monetary value over \$1,000, or a monetary value between \$500 and \$1,000, and the person has been convicted within the preceding five years for an offense under this section, and creates a reasonably foreseeable risk of bodily harm to another, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table.

Felony offenses, other than specified sex offenses, are arrayed into eleven levels of severity, ranging from low (Severity Level 1) to high (Severity Level 11). Specified sex offenses are arrayed on a separate grid into eight severity levels labeled A thru H. First-degree murder and sex offenses under Minnesota Statutes, section 609.3455, subdivision 2, are 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 severity level for each felony offense is governed by Section 5: Offense Severity Reference Table. Some offenses are designated as unranked offenses in the Offense Severity Reference Table. When unranked offenses are being sentenced, the sentencing judges shall exercise their discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned. If an offense is inadvertently omitted from the Offense Severity Reference Table, the offense shall be considered unranked and the above procedures followed.

(Amended effective August 1, 1997; amended effective August 1, 2002; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2009.)

Comment

2.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.*

2.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.*

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.

(Amended August 1, 1985; amended August 1, 1993; amended August 1, 2003; amended August 1, 2007.)

2.A.03. *Some offenses, including Minnesota Statutes, sections 609.2241 - Knowing Transfer of Communicable Disease, 609.229, subdivision 3, paragraph (a) - Crime Committed for Benefit of a Gang, 609.3453 - Criminal Sexual Predatory Conduct, and 609.714 - Offense in Furtherance of Terrorism, involve other offenses committed under specific circumstances. The severity level for these offenses is the same as that of the underlying offense. The presumptive sentence for some of these offenses, however, is increased from that of the underlying offense as described in II.G: Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.*

(Amended November 1, 1983; amended August 1, 1987; amended December 16, 1987; amended August 1, 1988; amended August 1, 1989; amended August 1, 1991; amended August 1, 1993; amended August 1, 1994; amended August 1, 1995; amended August 1, 1996; amended August 1, 1997; amended August 1, 1999; amended August 1, 2000; amended August 1, 2001; amended September 14, 2001; amended January 1, 2003; amended August 1, 2003; amended August 1, 2005; amended August 1, 2006.)

2.A.04. *Offenses are generally left unranked because prosecutions for these offenses are rarely initiated, because the offense covers a wide range of underlying conduct, or because the offense is new and the severity of a typical offense cannot yet be determined. When exercising their discretion by assigning an appropriate severity level, sentencing judges may consider, but are not limited to, the following factors: 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.*

Incest was left unranked because, since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes. If an offender is convicted of incest and 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. Conversely, when incest consists of behavior not included in the criminal sexual conduct statutes (for example, consenting sexual penetration involving individuals over age 18), sentencing judges should exercise their discretion to assign an appropriate severity level as described above.

If a significant number of future convictions are obtained under one or more of the unranked offenses, the Commission will reexamine the ranking of these offenses and assign an appropriate severity level for a typical offense.

(Amended August 1, 1982; amended August 1, 1985; amended August 1, 2006.)

2.A.05. *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 4, the offender must be convicted under the general theft statute, Minnesota Statutes, section 609.52, subdivision 2, clause (1), and the offense must involve theft of a motor vehicle, in order for severity level 4 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 4, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Minnesota Statutes, section 609.52, subdivision 2, clause (17), the appropriate severity level is 3, regardless of whether the sentencing provision that is cited is Minnesota Statutes, section 609.52, subdivision 3, clause (3)(d)(v).*

(Added November 16, 1989; amended August 1, 1992; amended August 1, 2006.)

B. Criminal History

A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grids. The criminal history index is comprised of the following items:

- (1) prior felony record;
- (2) custody status at the time of the offense;
- (3) prior misdemeanor and gross misdemeanor record; and
- (4) prior juvenile record for young adult felons.

The classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies is determined on the basis of current Minnesota offense definitions and

sentencing policies, except that when a monetary threshold determines the offense classification, the monetary classification in effect at the time the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history index. Offenses which are petty misdemeanors by statute, or which are deemed petty misdemeanors by Minn. R. Crim. P. 23.02 (the only sanction is a fine less than the misdemeanor fine level defined in statute) and 23.04, are not used to compute the criminal history index.

(Amended effective August 1, 2006.)

Comment

2.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.*

(Amended November 1, 1983.)

2.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.*

(Amended November 1, 1983.)

2.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.*

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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.

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.

a. If the current offense is not a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

SEVERITY LEVEL	POINTS
1-2	1/2
3-5	1
6-8	1 1/2
9-11	2
Murder 1st Degree	2
A	2
B-E	1 1/2
F-G	1
H	1/2 (for first offense)
	1 (for subsequent offenses)

b. If the current offense is a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

SEVERITY LEVEL	POINTS
1-2	1/2
3-5	1
6-8	1 1/2
9-11	2
Murder 1st Degree	2
A	3
B-C	2
D-E	1 1/2
F-G	1
H	1/2 (for first offense) 1 (for subsequent offenses)

c. When multiple sentences for a single course of conduct were imposed pursuant to Minnesota Statutes, section 152.137, 609.585, or 609.251, only the offense at the highest severity level is considered; when multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minnesota Statutes, section 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.

d. 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;

e. 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 section 2.B.3 below;

f. 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.

The felony point total is the sum of these weights; no partial points are given.

(Amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1986; amended effective August 1, 1989; amended effective January 1, 1995; amended effective August 1, 1997; amended effective August 1, 2000; amended effective August 1, 2002; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2008; amended effective August 1, 2011.)

Comment

2.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 1/2 would have 2 felony points.*

(Amended December 9, 1981; amended August 1, 1982; amended November 1, 1983; amended August 1, 1984; amended August 1, 1985; amended August 1, 1986; amended August 1, 1989; amended November 16, 1989; amended August 1, 1992; amended August 1, 2000; amended August 1, 2004; amended August 1, 2007; amended August 1, 2008,

2nd paragraph renumbered II.B.102, 3rd paragraph renumbered II.B.103, 4th paragraph renumbered II.B.104, 5th paragraph renumbered II.B.105, 6th paragraph renumbered II.B.106.)

2.B.102. *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.*

(Renumbered August 1, 2008, text moved from II.B.101.)

2.B.103. *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. This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table.*

(Renumbered August 1, 2008, text moved from II.B.101.)

2.B.104. *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 out-of-state 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.*

(Renumbered August 1, 2008, text moved from II.B.101.)

2.B.105. *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 Section 2.A.b.*

(Renumbered August 1, 2008, text moved from II.B.101.)

2.B.106. *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 2.F shall be followed in determining the appropriate sentence duration under the guidelines.*

(Renumbered August 1, 2008, text moved from II.B.101.)

2.B.107. *The Commission established policies to deal with several specific situations which arise under Minnesota law: a conviction under Minnesota Statutes, section 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; Minnesota Statutes, section 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 Minnesota Statutes, section 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 Minnesota Statutes, section 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 Minnesota Statutes, section 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 Minnesota Statutes, sections 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).

(Amended August 1, 1982; amended November 1, 1983; amended August 1, 1989; amended August 1, 1997; amended August 1, 2005; renumbered and amended August 1, 2008; amended effective August 1, 2010.)

2.B.108. *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.

(Amended November 1, 1983; amended August 1, 1989; renumbered August 1, 2008.)

2.B.109. *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.

(Renumbered August 1, 2008.)

2.B.110. *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.*

(Amended August 1, 1982; amended August 1, 1984; amended August 1, 1986; renumbered August 1, 2008.)

2.B.111. *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.*

(Amended August 1, 1982; amended August 1, 1984; amended August 1, 1986; renumbered August 1, 2008.)

2.B.112. *An offense upon which a judgment of guilty has not been entered before the current sentencing; e.g., pursuant to Minnesota Statutes, section 152.18, subdivision 1, shall not be assigned any weight in computing the criminal history score.*

(Added August 1, 1987; amended August 1, 1989; renumbered August 1, 1998; renumbered and amended August 1, 2008.)

2.B.113. *Under Minnesota Statutes, section 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 Minnesota Statutes, section 260B.130, subdivision 4, paragraph (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 2.B.1.a - f, 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.*

(Added January 1, 1995; renumbered August 1, 1998; amended August 1, 2006; renumbered and amended August 1, 2008.)

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2. One point is assigned if the offender:

a. was on probation, parole, supervised release, conditional release, released pending sentencing, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or conviction in a felony, extended jurisdiction juvenile, 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e); or

b. committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. "not to exceed three years," "three to five years," "up to the statutory maximum"), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. This policy applies to a conviction in a prior felony, extended jurisdiction juvenile, 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e). This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or

c. became subject to one of the criminal justice supervision statuses listed in 2.a above at any point in time during which the offense occurred when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense.

d. An **additional** custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above for a specified sex offense, other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166).

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 Grids.

Three months shall also be added to the lower and upper end of the range provided in the appropriate cell. If the current conviction is an attempt or conspiracy under Minnesota Statutes, section 609.17 or 609.175, and three months is added to the cell duration under this section, the three months shall be added to the cell duration before that duration is halved pursuant to section 2.G: Convictions for Attempts, Conspiracies, and Other Sentence Modifiers when determining the presumptive sentence duration. No presumptive duration, however, shall be less than one year and one day.

(Amended effective November 1, 1983; amended effective January 1, 1995; amended effective August 1, 1996; amended effective August 1, 2001; amended effective August 1, 2003; amended effective August 8, 2003; amended effective August 1, 2004; amended effective August 1, 2006; amended August 1, 2007; amended effective August 1, 2008; amended effective August 1, 2009; amended effective August 1, 2010; amended effective August 1, 2011.)

Comment

2.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission has determined that the potential for a custody status point should remain for the entire period of the probationary sentence. If an offender receives an initial term of probation that is definite, is released from probation prior to the expiration of that term and commits a new crime within the initial term, it is clear that a custody point will be assigned. For example: the offender is put on probation for five years, is released from probation in three years, and commits a new crime in year four; a custody status point will be added to the individual's criminal history. When an offender is given an indefinite initial term of probation and commits a new crime at any time prior to the end date of the pronounced range, he will be assigned a custody status point. Thus, an initial term of probation "not to exceed three years" is, for this purpose, three years; "three to five years" is five years; "up to the statutory maximum" is the statutory maximum. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.*

(Amended November 1, 1983; amended August 1, 1987; amended January 1, 1995; amended August 1, 1996; amended August 1, 2001; amended August 1, 2003; amended August 8, 2003; amended August 1, 2008.)

2.B.202. *Probation given for an offense treated pursuant to Minnesota Statutes, section 152.18, subdivision 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, 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (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, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point.*

(Renumbered August 1, 2008, text moved from II.B.201; amended effective August 1, 2010.)

2.B.203. *It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e). Thus, a person who commits a new felony while on pretrial diversion or pretrial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*

(Renumbered August 1, 2008, text moved from II.B.201; amended effective August 1, 2010; amended effective August 1, 2011.)

2.B.204. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired offenses and serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses.*

(Added November 1, 1983; amended August 1, 1995; amended August 1, 2000; amended August 1, 2002; amended August 1, 2006; renumbered August 1, 2008.)

2.B.205. *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.*

(Added November 1, 1983; renumbered August 1, 2008.)

2.B.206. *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.*

(Renumbered August 1, 2008.)

2.B.207. *The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, the offender should receive a custody status point if they become subject to one of the criminal justice supervision statuses outlined in 2.a at any point during the time period in which the offenses occurred. While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.*

(Amended August 1, 1985; amended August 1, 2006; renumbered August 1, 2008.)

2.B.208. *When an offender who is on any custody status condition listed above for a sex offense commits another sex offense, they are assigned an additional custody status point. The Commission believes that offenders who commit a subsequent sex offense pose such a risk to public safety that their criminal history scores should be enhanced to reflect this risk. This policy does not apply to the offense of Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166).*

(Amended August 1, 1985; amended August 1, 2006; amended August 1, 2007; renumbered August 1, 2008.)

2.B.209. *A custody status point shall be assigned to an offender who is on any custody status condition listed above who absconds and commits a new felony offense. The custody status type depends on the form of supervision which exists. For example, a custody status point is assigned to a person who absconds from supervised release and commits a new felony offense. The custody status type would be "supervised release."*

(Added effective August 1, 2009.)

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3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), for each non-traffic gross misdemeanor conviction and for each gross misdemeanor driving while impaired or refusal to submit to a chemical test case 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. 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 Minnesota Statutes, 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case 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 Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), shall **not** be used to compute units.

c. When multiple sentences for a single course of conduct are given pursuant to Minnesota Statutes, section 152.137, 609.251, or 609.585, no offender shall be assigned more than one unit.

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 date of discharge from or expiration of the sentence, to the date of 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.

(Amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1986; amended effective August 1, 1989; amended effective August 1, 1993; amended effective August 1, 1994; amended effective August 1, 2000; amended effective September 14, 2001; amended effective August 1, 2002; amended effective August 1, 2003; effective August 1, 2007; amended effective August 1, 2010; amended effective August 1, 2011.)

Comment

2.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.*

(Amended November 1, 1983; amended August 1, 1984; amended August 1, 1989; amended August 1, 1993; amended August 1, 1999; amended August 1, 2000; amended September 14, 2001; amended August 1, 2002; amended August 1, 2003; amended August 1, 2007; paragraphs 2 through 4 renumbered August 1, 2008.)

2.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. The Commission believes that a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.*

(Renumbered August 1, 2008, text moved from II.B.301; amended effective August 1, 2010.)

2.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. Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case are considered more culpable and are given an additional criminal history point under the guidelines.

(Amended November 1, 1983; amended August 1, 1985; amended August 1, 1989; amended August 1, 1993; amended August 1, 2000; amended September 14, 2001; amended August 1, 2002; amended August 1, 2003; amended August 1, 2007; renumbered August 1, 2008; amended effective August 1, 2010.)

2.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 Minnesota Statutes, section 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.*

(Renumbered August 1, 2008, text moved from II.B.302; amended effective August 1, 2010.)

2.B.305. *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 Minnesota Statutes, section 152.137, 609.251, or 609.585. 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 Minnesota Statutes, section 152.137, 609.251, or 609.585, 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 Minnesota Statutes, sections 152.137, 609.251, and 609.585. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

(Amended August 1, 1989; renumbered August 1, 2008; amended effective August 1, 2010.)

2.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; however, given that these offenses are less serious, the decay period is ten years rather than 15 years.*

(Renumbered August 1, 2008; amended effective August 1, 2010.)

2.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.*

(Amended August 1, 1989; renumbered August 1, 2008; amended effective August 1, 2010.)

2.B.308. *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 adjudications.*

(Added August 1, 1997; renumbered August 1, 2008; amended effective August 1, 2009; amended effective August 1, 2010.)

.....

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

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

b. The juvenile adjudications were pursuant to offenses occurring after the offender's fourteenth birthday;

c. 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

d. Generally, an offender may receive only one point for adjudications committed and prosecuted as a juvenile that are felonies under Minnesota law. 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 2.C. Presumptive Sentence.

(Amended effective November 1, 1983; amended effective August 1, 1989; amended effective January 1, 1995; amended effective August 1, 1997; amended effective August 1, 2009.)

Comment

2.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.

(Amended November 1, 1983; amended January 1, 1995.)

2.B.402. Only juvenile adjudications for 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.

(Amended November 1, 1983; amended January 1, 1995; amended August 1, 1997; amended August 1, 2008; amended effective August 1, 2009.)

2.B.403. Consistent with Minnesota Statutes, section 609.035, which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile adjudications for offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.

(Renumbered August 1, 2008, text moved from II.B.402; amended effective August 1, 2009.)

2.B.404. The juvenile adjudications must result from offenses committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date of adjudication to eliminate variability in application based on differing juvenile court practices.

(Amended November 1, 1983; amended January 1, 1995; renumbered and amended August 1, 2008; amended effective August 1, 2009.)

2.B.405. Juvenile adjudications 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.

(Amended November 1, 1983; amended January 1, 1995; renumbered and amended August 1, 2008; amended effective August 1, 2009.)

2.B.406. The Commission decided that, provided the above conditions are met, it would take two juvenile adjudications to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile adjudications. 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 2.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 adjudications are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.

(Amended November 1, 1983; amended August 1, 1989; amended January 1, 1995; renumbered and amended August 1, 2008; amended effective August 1, 2009.)

2.B.407. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with adjudications arising from a single course of conduct when single victims are involved and when the adjudications involved provisions of Minnesota Statutes, section 152.137, 609.251, or 609.585, consideration should be given to the most severe offense with an adjudication for purposes of computing criminal history.

When there are multiple felony offenses with adjudications 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 adjudications 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 Minnesota Statutes, sections 152.137, 609.251, and 609.585. The Commission's decision not to amend the sentencing guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).

(Added August 1, 1997; renumbered August 1, 2008; amended effective August 1, 2009; amended effective August 1, 2010.)

.....

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. The weighting of prior out-of-state felonies is governed by Section 2.B.1, and shall be based on the severity level of the equivalent Minnesota felony offense; Federal felony offenses for which there is no comparable Minnesota offense shall receive a weight of one in computing the criminal history index score. The determination of the equivalent Minnesota felony for an out-of-state felony is an exercise of the sentencing court's discretion and is based on the definition of the out-of-state offense and the sentence received by the offender.

The determination as to whether a prior out-of-state conviction for a felony offense committed by an offender who was less than 18 years old should be included in the juvenile section or adult section of the criminal history score is governed by Minnesota law. The conviction should be included in the juvenile history section if it meets the requirements outlined in 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 occurred in Minnesota. See *State v. Marquetti*, 322 N.W.2d 316 (Minn. 1982).

(Amended effective August 1, 1982; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2008.)

Comment

2.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.*

(Amended August 1, 1982.)

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 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.*

(Amended August 1, 1998.)

2.B.503. *For prior out-of-state 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.*

(Added August 1, 2008.)

.....

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, prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), or 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. Except for in the case of first degree (felony) driving while impaired (DWI), misdemeanor and gross misdemeanor offenses used to enhance the current offense shall be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement shall always be used in calculating the offender's criminal history score.

If the current offense is a felony DWI offense and the offender has a prior felony DWI offense, the prior felony DWI shall be used in computing the criminal history score, but the prior misdemeanor and gross misdemeanor offenses used to enhance the prior felony DWI cannot be used in the offender's criminal history.

(Added effective August 1, 1995; amended effective August 1, 1996; amended effective August 1, 2002; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2009; amended effective August 1, 2011.)

Comment

2.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 misdemeanor or gross misdemeanor 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 \$500 but less than \$1,000 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.*

(Added August 1, 1995; amended August 1, 2002; amended August 1, 2007; August 1, 2008, last paragraph numbered as II.B.602.)

2.B.602. *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 misdemeanor and gross misdemeanor offenses should also be excluded for a subsequent felony DWI, but any prior felony DWI would be counted as part of the felony criminal history score.*

(Renumbered August 1, 2008, text moved from II.B.601.)

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

(Amended effective August 1, 1982; renumbered effective August 1, 1995.)

C. Presumptive Sentence

The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis of the appropriate grid. 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 Grids are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

The shaded areas on the Sentencing Guidelines Grids demarcate those cases for whom the presumptive sentence is stayed from those for whom the presumptive sentence is executed. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence.

Pursuant to Minnesota Statutes, section 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 2.C, or any applicable mandatory minimum sentence not contained in Minnesota Statutes, section 609.3455, that must be served before the offender may be considered for release.

When the current conviction offense is burglary of an occupied dwelling (Minnesota Statutes, section 609.582, subdivision 1, clause (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 provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section 2.B.1.f., do not apply to this requirement. See *State v. Jones*, 587 N.W.2d 854 (Minn. App. 1999). A conviction too old to be used for criminal history may trigger the presumptive commitment. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines 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 Minnesota Statutes, section 152.18, subdivision 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 Minnesota Statutes, section 152.01, subdivision 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 2.B.1.f., do not apply to this requirement. A previous stay of adjudication under Minnesota Statutes, section 152.18, subdivision 1, or an earlier conviction is not relevant if ten years have elapsed since discharge from sentence or stay of adjudication (Minnesota Statutes, section 152.01, subdivision 16a). 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 requirement regarding previous dispositions under Minnesota Statutes, 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 had a previous conviction, as defined by Minnesota Statutes, section 609.02, subdivision 5, for a felony DWI; or as defined by Minnesota Statutes, section 169A.24, subdivision 1, clause (3), for a criminal vehicular homicide or operation, prior to commission of the current offense, 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 2.B.1.f., do not apply to this requirement. A conviction too old to be used for criminal history may trigger the presumptive commitment.

The presumptive disposition is commitment to the Commissioner of Corrections for an escape from an executed sentence, for a felony assault committed by an inmate serving an executed term of imprisonment, or for assault on secure treatment facility personnel. It is presumptive for escape from an executed sentence and for a felony assault committed by an inmate serving an executed term of imprisonment 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 2.F. Presumptive Consecutive Sentences).

Every cell in the Sentencing Guidelines Grids 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 Minnesota Statutes, section 244.10, subdivision 2, and Section 2.D. of these guidelines.

(Amended effective August, 1982; amended effective November 1, 1983; amended effective August 1, 1984; amended effective August 1, 1985; amended effective August 1, 1989; amended effective August 1, 1992; amended effective August 1, 1994; amended effective August 1, 1995; amended effective August 1, 1996; amended effective August 1, 1997; amended effective August 1, 1998; amended effective August 1, 1999; amended effective August 1, 2000; amended effective August 1, 2002; amended effective January 1, 2003; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2009; amended effective August 1, 2010.)

Comment

2.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 outside the shaded areas of the grids, the guidelines create a presumption in favor of execution of the sentence. For cases in cells within the shaded areas, 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.

(Amended November 1, 1983; amended August 1, 1989; amended August 1, 2006.)

2.C.02. *In the cells outside of the shaded areas of the grids, 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 Grids 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 in the shaded areas of the grids, the guidelines provide a single fixed presumptive sentence length.*

(Amended August 1, 1993; amended August 1, 2006; August 1, 2008, 2nd and 3rd paragraphs numbered II.C.03.)

2.C.03. *The presumptive duration listed on the grid, when executed, includes both the term of imprisonment and the period of supervised release. According to Minnesota Statutes, section 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 Grids 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.

(Renumbered August 1, 2008, text moved from II.C.02.)

2.C.04. *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.*

(Renumbered August 1, 2008.)

2.C.05. *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.*

(Renumbered August 1, 2008.)

2.C.06. *If an offender is convicted of a felony, and no stayed sentence is given under Minnesota Statutes, sections 609.13 through 609.14, and the judge imposes or stays a misdemeanor or gross misdemeanor sentence, that is a departure from the guidelines.*

(Renumbered August 1, 2008.)

2.C.07. *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minnesota Statutes, section 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.*

(Renumbered August 1, 2008.)

2.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 Minnesota Statutes, section 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).*

(Added August 1, 2000; amended August 1, 2006; amended effective August 1, 2010.)

2.C.09. Post-Blakely Sentencing Issues

The United States Supreme Court and the Minnesota Supreme and Appellate Courts have ruled that any fact other than a prior conviction that increases the penalty for the crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond

a reasonable doubt. Sentencing procedures that fail to provide this process are unconstitutional and violate a defendant's Sixth Amendment right under the United States Constitution. Although the ruling by the court appears clear, there are multiple issues surrounding what constitutes an enhancement, as well as what constitutes a statutory maximum sentence, that are being addressed by the courts. The Sentencing Guidelines Commission, in an effort to assist practitioners involved in sentencing procedures, is providing a summary of court decisions to date involving Blakely sentencing issues. The information provided is not intended to be considered as an exhaustive list of relative cases, but rather intended to serve as a guide to assist in sentencing.

2.C.09.a. Statutory Maximum Sentence

Apprendi v. New Jersey, 530 U.S. 466 (2000). Case involved a defendant that pled guilty to 2nd degree possession of a firearm for unlawful purposes that carried a prison sentence of between 5 and 10 years. The state requested the court to make the factual finding necessary to impose the state's Hate Crime Law sentencing enhancement provision, increasing the sentence to between 10 and 20 years. The judge held the requested hearing, listened to the evidence and determined by a preponderance of the evidence standard that crime met the Hate Crime Law criteria. The court's imposition of an enhanced prison sentence based on the hate crime statute exceeded the statutory maximum sentence for the underlying offense. Court ruled that any factor other than a prior conviction that increases the penalty for the crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.

2.C.09.b. Presumptive Sentence

Blakely v. Washington, 1264 S.Ct. 2531 (2004). Case involved the court's imposition of an exceptional sentence under the state's sentencing guidelines, for which justifiable factors were provided, which exceeded the presumptive guidelines sentence but was less than the statutory maximum sentence for the offense. Court reaffirmed and clarified its earlier ruling in *Apprendi* stating, that under the Sixth Amendment, all factors other than prior criminal convictions that increase a criminal defendant's sentence beyond what it would have been absent those facts, must be presented to a jury and proven beyond a reasonable doubt. The jury trial right does not just mean that a defendant has the right to present a case to the jury; it also means that a defendant has a right to have a jury, not the court, make all the factual findings required to impose a sentence in excess of the presumptive guideline sentence, unless the defendant formally admits some or all of the factors or formally waives that right.

State v. Shattuck, 704 N.W.2d 131 (Minn. 2005). Case involved a defendant that was convicted of 2 counts of kidnapping, 2 counts of 1st degree sexual conduct, and 1 count of aggravated robbery. The presumptive guideline sentence for these offenses would have been 161 months given the severity level 7 ranking with a criminal history score of 9, including a custody status point. Under the Repeat Sex Offender Statute, for certain types of 1st and 2nd degree sexual conduct offenses, the court **shall** commit the defendant to not less than 30 years if the court finds (1) an aggravating factor exists which provides for an upward departure, and (2) the offender has previous convictions for 1st, 2nd or 3rd degree criminal sexual conduct. The court imposed a 161 month sentence for the kidnapping conviction and 360 months for the 1st degree criminal sexual conduct, using the Repeat Sex Offender Statute. The court found that a jury, not the court, must make the determination that aggravating factors are present to impose an upward durational departure under the sentencing guidelines, citing the *Blakely* ruling. The decision also held that Minnesota Statutes, section 609.109, is unconstitutional since it authorizes the court to impose an upward durational departure without the aid of a jury.

The court also ruled that the Minnesota Sentencing Guidelines are not advisory and that the imposition of the presumptive sentence is mandatory absent additional findings. This finding specifically rejects the remedy that the guidelines are advisory as set forth in

the United States Supreme Court in *United States v. Booker* 125 S. Ct. 738 (2005). In addition, the decision stated that Minnesota Sentencing Guidelines Section 2.D., which pertains to the manner in which aggravated departures are imposed, is "facially unconstitutional" and must be severed from the remainder of the guidelines. However, the remainder of the guidelines shall remain in effect and mandatory upon the courts. The court also noted in *Shattuck* that Minnesota Courts have the inherent authority to authorize the use of sentencing juries and bifurcated proceedings to comply with *Blakely*. While the Supreme Court was deciding the *Shattuck* case, the legislature amended Minnesota Statutes, section 609.109, to comply with the constitutional issues raised in *Blakely*. However, the court took no position on the constitutionality of legislative action. Acknowledging the court's inherent authority to create rules and procedures, the decision stated that it was the belief of the court that the legislature should decide the manner in which the sentencing guidelines should be amended to comply with the constitutional requirements of *Blakely*. On October 6, 2005, the Minnesota Supreme Court issued an order amending the *Shattuck* opinion clarifying that the legislature has enacted significant new requirements for sentencing aggravated departures which included sentencing juries and bifurcated trials. It further clarified that these changes apply both prospectively and to re-sentencing hearings. This clarification enables re-sentencing hearings to include jury determination of aggravating factors and the imposition of aggravated departure sentences.

State v. Allen, 706 N.W.2d 40 (Minn. 2005). Case involved a defendant who pled guilty to 1st degree test refusal as part of a negotiated plea agreement in exchange for the dismissal of other charges and the specific sentence to be determined by the court. The district court determined the defendant had a custody point assigned to their criminal history, since the defendant was on probation for a prior offense at the time of the current offense. The presumptive guidelines sentence was a 42 month stayed sentence. However, based on the defendant's numerous prior alcohol-related convictions and history of absconding from probation, the court determined the defendant was not amenable to probation and sentenced the defendant to a 42 month executed prison sentence, representing an aggravated dispositional departure under the sentencing guidelines. The case was on appeal when *Blakely v. Washington* was decided. The court ruled that a stayed sentence is not merely an alternative mode of serving a prison sentence, in that the additional loss of liberty encountered with an executed sentence exceeds the maximum penalty allowed by a plea of guilty or jury verdict, thus violating the defendant's Sixth Amendment Constitutional right. The court viewed a sentence disposition as much an element of the presumptive sentence as the sentence duration. Dispositional departures that are based on offender characteristics are similar to indeterminate sentencing model judgments and must be part of a jury verdict in that "amenability to probation" is not a fact necessary to constitute a crime. When the district court imposed an aggravated dispositional departure based on the aggravating factor of unamenability to probation without the aid of a jury, the defendant's constitutional rights were violated under *Blakely*. Unamenability to probation may be used as an aggravating factor to impose an upward dispositional departure, but it must be determined by a jury and not the court. The *Allen* case also raises the issue and much speculation whether probation revocations resulting in an executed prison sentence are also subject to *Blakely* provisions. Although the *Allen* case focuses on imposition of an executed prison sentence as the result of an aggravated dispositional departure sentence based on the defendant's unamenability to probation, the court's stated reasons in its ruling could be interpreted as to be applicable to probation revocations that result in the imposition of an executed sentence due to an offender's lack of progress or success on probation. The Sentencing Guidelines Commission awaits further action by the Minnesota Courts addressing this specific issue.

State v. Conger, 687 N.W.2d 639 (Minn. App. 2004). Case involved a defendant who pled guilty to aiding and abetting in a 2nd degree intentional and unintentional murder. At sentencing, the judge determined that multiple aggravating factors were present and imposed an upward durational departure. The court ruled that the presumptive sentence designated by the guidelines is the maximum sentence a judge may impose without finding facts to support a departure. Any fact other than prior conviction used to impose a departure

sentence must be found by a jury or admitted by the defendant. The court also ruled that when a defendant pleads guilty, any upward departure that is not entirely based on the facts admitted in the guilty plea is a violation of the defendant's Sixth Amendment rights and unconstitutional.

State v. Mitchell, 687 N.W.2d 393 (Minn. App. 2004). Case involved a defendant who was arrested for theft with a presumptive guidelines sentence of 21 months. The judge determined the defendant is a career criminal under Minnesota Statutes, section 609.1095, subdivision 4 (2002), after determining the defendant had 5 or more prior felony convictions and the current conviction was part of a "pattern of criminal conduct." The judge imposed an upward departure of 42 months. The court ruled that a pattern of criminal conduct may be shown by criminal conduct that is similar but not identical to the charged offense in such factors as motive, results, participants, victims or shared characteristics. This determination goes beyond the mere fact of prior convictions since prior convictions do not address motive, results, participants, victims, etc. A jury, not a judge, must determine if the defendant's prior convictions constitute a "pattern of criminal conduct" making him a career criminal.

State v. Fairbanks, 688 N.W.2d 333 (Minn. App. 2004). Case involved a defendant who was convicted of 1st degree assault of a correctional employee and kidnapping. The judge sentenced the defendant under the Dangerous Offender Statute which provides for a durational departure from the presumptive guideline sentence. Criteria necessary for sentencing under this statute include (1) two or more convictions for violent crimes and (2) offender is a danger to public safety. Defendant stipulated to the past criminal behavior during trial but that admission by the defendant alone does not permit a finding that the defendant is a danger to public safety. That finding must be determined by a jury. A judge can only depart upward based solely on prior convictions. The court also ruled that a defendant's waiver of Blakely rights must be knowing, intelligent and voluntary.

2.C.09.c. Mandatory Minimum - Minnesota Statutes, section 609.11

Effective August 1, 2006, Minnesota Statutes, section 609.11, provides for a mandatory minimum prison sentence when the factfinder determines that the defendant possessed a deadly weapon while committing the predicate offense. If an offense that occurred before August 1, 2006, is charged under Minnesota Statutes, section 609.11, the defendant cannot be sentenced to the mandatory minimum when the resulting sentence is higher than the presumptive sentence for the predicate offense, unless the same Blakely-based procedure is followed. *State v. Barker*, 705 N.W.2d 768 (Minn. 2005). In cases where the weapon is an element of the offense, there is no Blakely issue.

2.C.09.d. Custody Status Point

State v. Brooks, 690 N.W.2d 160 (Minn. App. 2004). Case involved a defendant convicted of a 5th degree assault and tampering with a witness. The defendant had a criminal history score of 6 or more prior to the sentencing for this conviction. The guidelines provide for a three month enhancement for the custody status point. Defendant argued the three month enhancement is in violation of Blakely. Court rules that determination of the custody status point is analogous to the Blakely exception for "fact of prior conviction." Like a prior conviction, a custody status point is established by court record based on the fact of prior convictions and not by a jury. Presumptive sentencing is meaningless without a criminal history score, which includes the determination of custody status points.

2.C.09.e. Retroactivity

State v. Petschl, 692 N.W.2d 463 (Minn. App. 2004). Blakely provisions apply to all cases sentenced or with direct appeals pending on or after June 24, 2004.

State v. Houston, 702 N.W.2d 268, 273 (Minn. 2005). The Minnesota Supreme Court determined that Blakely could be applied retroactively to cases on direct review, but not collateral review. *Teague v. Lane* stated that in order for an issue to be retroactive for collateral review, the case needs to state a rule of law that is either: (1) new or not dictated by

precedent or (2) a "Watershed" rule meaning it requires an observance of those criminal procedures that are implicit in the concept of liberty. The court ruled that Blakely is not a rule of "watershed" magnitude since the accuracy of the conviction is not diminished. A Blakely violation results only in a remand for sentencing rather than a new trial to determine the validity of the conviction, thus Blakely does not apply to appeals on collateral review.

State v. Beaty, 696 N.W.2d 406 (Minn. App. 2005). Case involved a defendant who pled guilty to a charge with a violation of an order for protection (OFP) and terroristic threats. At sentencing the court imposed the presumptive guideline sentence of 18 months stay of execution. The defendant subsequently violated probation and admitted to the violations. The court revoked the defendant's probation, executed the 18 months sentence for the terroristic threats and vacated the stay of imposition for the violation of the OFP, imposing a 36 month concurrent executed sentence, which is an upward departure from the presumptive guideline sentence. Departure was based on the aggravating factors that the victim suffered extreme adverse effect from the violation of the OFP and probation did not appear to deter the defendant. Blakely was issued the day after the defendant was sentenced. Defendant challenged his probation revocation and the imposition of the departure under the retroactive provisions of Blakely. *United States v. Martin* addressed retroactivity of a standard of review for sentencing procedures and compels courts to apply procedural changes to all sentences that are not final. The defendant's sentence is not final for retroactivity purposes and still subject to appeal. The court held that when a district court imposes a stay of imposition of a sentence, thereby precluding challenge to the sentence on direct review and subsequently vacates the stay of imposition and imposes an upward departure, Blakely will apply retroactively.

2.C.09.f. Blakely Waiver Issues

State v. Hagen, 690 N.W.2d 155 (Minn. App. 2004). Case involved a defendant who pled guilty to Minnesota Statutes, section 609.342, subdivision 1, clause (g), sexual penetration of a victim under the age of 16 involving a significant relationship. Defendant lived in the same house as the 13 year old victim and there were numerous aggravating factors associated with the offense such as zone of privacy, particular vulnerability and great psychological harm, which the defendant does not deny. Defendant admitted the sexual penetration and stated his attorney discussed the "significant relationship" element with him. District court stated this is one of the worst child sex abuse cases it had seen and imposed an aggravated durational departure from the 144 month presumptive guideline sentence to 216 months. Defendant appealed his sentence on Blakely issues. Court ruled that Blakely has blurred the distinction between offense elements and sentencing factors. When the defendant stipulates to an element of an offense, it must be supported by an oral or written waiver of the defendant's right to a jury trial on that aggravating element. In *Hagen*, the admissions were made at the sentencing hearing rather than at the guilty/not guilty plea hearing where he could waive his right to a jury trial. The record must clearly indicate the aggravating factor was present in the underlying offense. Admissions must be effective and more than just not objecting to the aggravating factors.

State v. Senske, 692 N.W.2d 743 (Minn. App. 2005). Case involved a defendant who pled guilty to two counts of 1st degree criminal sexual conduct with no agreement on the sentence as part of the plea. Defendant admitted to multiple acts of penetration with step-daughter and son, including blindfolding the son. District Court determined the defendant's actions warrant an upward durational departure due to the psychological harm to the victims, vulnerability due to age, the planning and manipulation involved in the act and death threats made to the victims. The court imposed 216 month consecutive sentences, representing a 50 percent increase over the presumptive guideline sentence. Defendant appealed his sentence on a Blakely issue and the imposition of consecutive sentences. The court ruled that even though the sentence to be imposed was not part of the plea agreement, the defendant nonetheless was not advised that the aggravating factors he admitted to could be

used to impose an aggravated departure. Even though the defendant admitted to the aggravating factors, those admissions were not accompanied by a waiver of the right to a jury determination of the aggravating factors. The court further stated that the imposition of consecutive sentences did not violate Blakely principles since the consecutive sentences were based on the fact the offenses involved were "crimes against a person" and involved separate sentences for separate offenses.

(Added January 1, 2003; amended August 1, 2006; amended August 1, 2007; amended August 1, 2008.)

D. Departures from the Guidelines

The sentence ranges provided in the Sentencing Guidelines Grid are presumed to be appropriate for the crimes to which they apply. Thus, the judge shall pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grid. A sentence outside the applicable range on the grid is a departure from the sentencing guidelines and is not controlled by the guidelines, but rather, is an exercise of judicial discretion constrained by case law and appellate review. However, in exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.

Furthermore, if an aggravated departure is to be considered, the judge must afford the accused an opportunity to have a jury trial on the additional facts that support the departure and to have the facts proved beyond a reasonable doubt. If the departure facts are proved beyond a reasonable doubt, the judge may exercise the discretion to depart from the presumptive sentence. In exercising that discretion, it is recommended that the judge pronounce a sentence that is proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and underlying principles of the sentencing guidelines. Because departures are by definition exceptions to the sentencing guidelines, the departure factors set forth in 2.D are advisory only, except as otherwise established by settled case law. When the conviction is for a criminal sexual conduct offense or offense in which the victim was otherwise injured, and victim injury is established in proving the elements of the crime, an aggravated durational departure is possible without a jury determination of additional facts if the departure is based on the offender's prior history of a conviction for a prior criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense.

(Amended effective August 1, 1982; amended effective August 1, 2005; amended effective August 1, 2006.)

Comment

2.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 than the presumptive sentence. A defendant has the right to a jury trial to determine whether or not aggravating factors are proved beyond a reasonable doubt.*

(Amended August 1, 2005.)

2.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.*

2.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.*

2.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.

(Added effective August 1, 1998.)

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

2.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.

(Amended August 1, 1989.)

2.D.102. *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.*

(Amended August 1, 2008.)

2.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 1 or 2 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 3 or 4 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.
- (6) Alternative placement for offender with serious and persistent mental illness (See Minnesota Statutes, section 609.1055).

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 sentenced according to Minnesota Statutes, section 609.3455, subdivision 3a (Mandatory sentence for certain engrained offenders).

(8) Offender is a "dangerous offender who commits a third violent crime" (See Minnesota Statutes, section 609.1095, subdivision 2).

(9) Offender is a "career offender" (See Minnesota Statutes, section 609.1095, subdivision 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.

(12) The offender's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense.

(13) The offense was committed in the presence of a child.

(14) The offense was committed in a location in which the victim had an expectation of privacy.

(Amended effective August 1, 1981; amended effective August 1, 1986; amended effective August 1, 1989; amended effective August 1, 1991; amended effective January 1, 1995; amended effective August 1, 1998; amended effective August 1, 2000; amended effective September 14, 2001; amended effective August 8, 2003; amended effective August 1, 2007; amended effective August 1, 2009.)

Comment

2.D.201. *The Commission provided a nonexclusive 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.*

2.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.*

(Added August 1, 1989.)

2.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 2.B.1.f.*

(Added August 1, 1986; amended August 1, 1989; amended August 1, 2006.)

2.D.204. *Special sentencing provisions were established by the legislature under Minnesota Statutes, sections 609.3455, subdivision 3a; 609.1095, subdivision 2; and 609.1095, subdivision 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.*

(Added August 1, 1989; amended August 1, 1998; amended September 14, 2001; amended August 1, 2007.)

2.D.205. *The aggravating factor involving groups of three or more persons under section 2.D.2.b.(10) cannot be used when an offender has been convicted under Minnesota Statutes, section 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, Minnesota Statutes, section 609.229, subdivision 3, paragraph (a).*

(Added August 1, 1991; amended January 1, 1995; amended August 1, 2006.)

2.D.206. *The aggravating factor involving bias motivation under Section 2.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., Minnesota Statutes, sections 609.2231,*

subdivision 4 (fourth-degree assault), 609.595, subdivision 1a, paragraph (a) (criminal damage to property); and 609.749, subdivision 3, clause (1) (stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.

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.

(Added August 1, 2000; amended August 1, 2006; amended August 1, 2008; amended effective August 1, 2010.)

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 Grids, whichever is longer.

First degree murder and sex offenders subject to Minnesota Statutes, section 609.3455, subdivision 2, which have mandatory life imprisonment sentences, are excluded from offenses covered by the sentencing guidelines.

When an offender is sentenced according to Minnesota Statutes, section 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 Minnesota Statutes, section 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 Minnesota Statutes, section 609.11, subdivision 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 Minnesota Statutes, section 609.11, subdivision 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 Minnesota Statutes, section 609.1095, subdivision 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 outside of the shaded areas of the grid, the sentence should be executed. For cases contained in cells within the shaded areas of the grid, the sentence should be stayed unless the offender had a previous conviction, as defined by Minnesota Statutes, section 609.02, subdivision 5, for a felony DWI; or as defined by Minnesota Statutes, section 169A.24, subdivision 1, clause (3), for a criminal vehicular homicide or operation prior to commission of the current offense, in which case the presumptive disposition is commitment to the Commissioner of Corrections.

Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

(1) First degree (felony) driving while impaired. Minnesota Statutes, section 169A.276, subdivision 1, paragraph (d).

(2) Predatory offense registration violation committed by certain offenders. Minnesota Statutes, section 243.166, subdivision 5a.

(3) Assault in the fourth degree against secure treatment facility personnel. Minnesota Statutes, section 609.2231, subdivision 3a, paragraph (d).

(4) First through fourth degree criminal sexual conduct and criminal sexual predatory conduct. Minnesota Statutes, section 609.3455, subdivisions 6 to 8.

(5) Use of minors in a sexual performance. Minnesota Statutes, section 617.246, subdivision 7.

(6) Possession of pornographic work involving minors. Minnesota Statutes, section 617.247, subdivision 9.

(Amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1989; amended effective August 1, 1991; amended effective August 1, 1992; amended effective August 1, 1993; amended effective August 1, 1994; amended effective August 1, 1995; amended effective August 1, 1996; amended effective August 1, 1998; amended effective August 1, 2002; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2010; amended effective August 1, 2011.)

Comment

2.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 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.*

(Amended August 1, 2002; amended August 1, 2007.)

2.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 outside the shaded areas of the grids. However, some cases carry a mandatory prison sentence under state law but fall within the shaded areas on the Sentencing Guidelines Grids; 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 above 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 Minnesota Statutes, section 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 sentence 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 6. 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 8 which is the first severity level ranked completely above the dispositional line.*

(Amended November 1, 1983; amended August 1, 1988; amended August 1, 1989; amended December 21, 1990; amended August 1, 1995; amended August 1, 1998; amended August 1, 2002; amended August 1, 2006; 2nd paragraph renumbered as II.E.03 August 1, 2008.)

2.E.03. *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 below the dispositional line on the Sentencing Guidelines Grids. 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.*

(Renumbered August 1, 2008, text moved from II.E.02.)

2.E.04. *In 1981 the mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minnesota Statutes, section 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 Minnesota Statutes, section 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.*

(Renumbered August 1, 2008.)

2.E.05. *There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies: Assault in the Second Degree, Certain Persons Not to Have Firearms, Drive-By Shootings, and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minnesota Statutes, section 609.749, subdivision 3, paragraph (a), clause (3). 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.*

(Renumbered August 1, 2008, text moved from II.E.03; amended effective August 1, 2011.)

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 Minnesota Statutes, section 244.10, subdivision 2, and Section 2.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.

(Amended effective October 10, 1980; amended effective October 30, 1980; amended effective November 1, 1983; amended effective August 1, 1986; amended effective August 1, 1988; amended effective August 1, 1992; amended effective August 1, 1996; amended effective August 1, 1997; amended effective August 1, 1998; amended effective August 1, 1999; amended effective August 1, 2000; amended effective September 14, 2001; amended effective January 1, 2003; amended effective August 1, 2003; amended effective August 1, 2004; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended August 1, 2008.)

Comment

2.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 an executed prison sentence, or by an offender on supervised release, on conditional release, 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 Minnesota Statutes, section 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.

(Amended August 1, 1992; amended August 1, 1996; amended August 1, 1999.)

2.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.*

(Amended November 1, 1983; amended August 1, 1984; amended August 1, 1990; amended August 1, 1992; amended August 1, 1993; amended August 1, 1996; amended August 1, 2008.)

2.F.03. *For persons sentenced under Minnesota Statutes, section 609.229, subdivision 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 2.G, and using the respective criminal history score appropriate for consecutive sentencing.*

(Amended November 1, 1983; amended August 1, 1988; amended August 1, 1989; amended August 1, 1992; amended August 1, 1996; amended August 1, 1997; amended August 1, 1999; amended August 1, 2000; amended August 1, 2008.)

2.F.04. *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.

(Amended August 1, 1996; amended August 1, 1998; amended August 1, 2000; amended August 1, 2005; amended August 1, 2008.)

2.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.

(Added August 1, 1996.)

2.F.06. *Minnesota Statutes, section 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 Minnesota Statutes, section 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 Minnesota Statutes, section 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.*

(Amended August 1, 1982; amended August 1, 1985; renumbered and amended August 1, 1996, previously numbered II.F.05.; amended January 1, 2003.)

1. Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, or by an offender on supervised release, on conditional 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 2.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 Minnesota Statutes, section 609.229, subdivision 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 2.G, and using the respective criminal history score appropriate for consecutive sentencing.

When an offender is sentenced for a felony DWI, a consecutive sentence is presumptive if the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence. The presumptive disposition for the felony DWI is based on the offender's location on the grid. If the disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on a criminal history score of one. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. If the disposition is commitment to prison, the requirement for consecutive sentencing does not apply (Minnesota Statutes, section 169A.28, subdivision 1, paragraph (b)).

(Amended effective August 1, 2008.)

Comment

2.F.101. For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

(Added August 1, 2008.)

2.F.102. 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.

(Added August 1, 2008.)

2.F.103. Consecutive sentences are 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 2.C.

(Added August 1, 2008.)

2.F.104. 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.

(Added August 1, 2008.)

2.F.105. 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 4 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.

(Added August 1, 2008.)

2. Permissive Consecutive Sentences

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

a. A current felony conviction for a crime on the list of offenses eligible for permissive consecutive sentences found in Section 6 may be sentenced consecutively to a prior felony sentence for a crime listed in Section 6 which has not expired or been discharged; or

b. Multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences found in Section 6 may be sentenced consecutively to each other; or

c. A current felony conviction for escape from lawful custody, as defined in Minnesota Statutes, section 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

d. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minnesota Statutes, section 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

e. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minnesota Statutes, section 609.485, from an executed felony sentence may be sentenced consecutively to the sentence for the escape; or

f. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minnesota Statutes, section 609.487, or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minnesota Statutes, sections 609.342 through 609.345; or

g. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

Consecutive sentences are permissive under the above criteria letters a, b, and d 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 2.C. In addition, consecutive sentences are permissive under letter a above, 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 2.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 letter c, e, f, or g. There is no dispositional departure if the sentences are executed when consecutive sentences are pronounced under criteria letter c, e, f, or g.

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 Minnesota Statutes, section 609.229, subdivision 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 2.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 Section 2.B.

(Amended effective August 1, 2008.)

Comment

2.F.201. *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.*

(Added August 1, 2008.)

2.F.202. *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 2.D, of the guidelines.*

(Added August 1, 2008.)

2.F.203. *It is permissive for multiple current felony convictions for offenses on the eligible list 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 2.C, of the guidelines. 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.*

(Added August 1, 2008.)

2.F.204. *If the presumptive disposition for an escape conviction from a non-executed 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. The presumptive duration for the escape is found at the zero criminal history score 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.*

Additionally, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.

(Added August 1, 2008.)

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 Minnesota Statutes, section 609.494, subdivision 2, paragraph (b), Solicitation of Mentally Impaired Persons under Minnesota Statutes, section 609.493, or Aiding an Offender - Taking Responsibility for Criminal Acts under Minnesota Statutes, section 609.495, subdivision 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 Minnesota Statutes, section 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 (Minnesota Statutes, section 609.342) or Criminal Sexual Conduct in the Second Degree (Minnesota Statutes, section 609.343, subdivision 1, clauses (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. The Commission regards the provisions of Minnesota Statutes, sections 609.342, subdivision 2, clause (b), and 609.343, subdivision 2, paragraph (b), as statutorily created presumptive sentences, and not mandatory minimums.

For persons sentenced under Minnesota Statutes, section 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased by fifty percent. 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.

For persons sentenced under Minnesota Statutes, section 609.3453 (criminal sexual predatory conduct), the presumptive sentence duration for the underlying offense, located in the Sentencing Guidelines Grid Cell defined by the offender's criminal history score and the severity level of the underlying crime, is increased by twenty-five percent. If the person was convicted and sentenced for a sex offense before the commission of the present offense, the presumptive sentence duration for the underlying offense is increased by fifty percent. Any partial months resulting from this calculation should be rounded down to the nearest half month.

For persons sentenced under Minnesota Statutes, section 609.322, subdivision 1, paragraph (b) - Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking - the presumptive sentence is determined by 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 48 months. If the underlying crime is an attempt or conspiracy, the presumptive duration includes an additional 24 months instead.

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

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	180 153-216	190 161.5- 228	200 170-240	210 178.5- 240 ¹	220 187-240 ¹	230 195.5- 240 ¹	240 204-240 ¹

¹ Minnesota Statutes, section 244.09, requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections 2.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and 2.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

For persons sentenced under Minnesota Statutes, section 609.229, subdivision 3, paragraph (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 Minnesota Statutes, section 609.229, subdivision 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 or an additional 24 months if the victim of the crime was under the age of eighteen years. If the underlying crime is an attempt, the presumptive duration includes an additional 6 months or an additional 12 months if the victim of the crime was under the age of eighteen years.

Any changes to presumptive sentences under this section are also applied to the upper and lower numbers of the sentencing range provided on the Sentencing Guidelines Grids.

(Amended effective October 30, 1980; amended effective August 1, 1982; amended effective August 1, 1986; amended effective August 1, 1987; amended effective August 1, 1989; amended effective August 1, 1991; amended effective August 1, 1993; amended effective August 1, 1995; amended effective August 1, 1997; amended effective August 1, 1998; amended effective August 1, 2000; amended effective January 1, 2003; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2009.)

Comment

2.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.*

(Amended November 1, 1983.)

2.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.*

(Renumbered from II.G.03., August 1, 1995.)

2.G.03. (Renumbered as II.G.02., August 1, 1995.)

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

2.H.01. *There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence.*

(Amended August 1, 1994; amended August 1, 2007.)

I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids
Minnesota Statutes, section 244.09, requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment. Although the shaded areas of the grid do not display ranges, when a presumptive duration for commitment is found in a shaded area, the standard range - 15 percent lower and 20 percent higher than the fixed duration displayed - is permissible without departure, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum.

(Added effective August 1, 2007.)

3. 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

3.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 nonpresumptive 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.

3.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 \$5,000 (severity level 3), 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.

(Amended August 1, 1987; amended August 1, 1998; amended August 1, 2007.)

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:

- (1) retribution,
- (2) rehabilitation,
- (3) public protection,
- (4) restitution,
- (5) deterrence, and
- (6) 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.

(Amended effective November 1, 1983; amended effective August 1, 2011.)

Comment

3.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.*

(Amended November 1, 1983.)

3.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 Minnesota Statutes, section 609.135, subdivision 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.*

(Added August 1, 1989.)

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

3.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 noncriminal technical violations of probationary conditions.*

(Amended November 1, 1983.)

C. Jail Credit

Pursuant to Minnesota Statutes, section 609.145, subdivision 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 (Minnesota Statutes, section 631.425).

(Amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1984; amended effective August 1, 1994; amended effective August 1, 1998.)

Comment

3.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 3.C Jail Credit.*

(Amended August 1, 1998; amended August 1, 2008.)

3.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.

(Added August 1, 1998.)

3.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.*

(Added August 1, 1998.)

3.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.

(Amended August 1, 1993; amended August 1, 1994; amended August 1, 1995; renumbered and amended August 1, 1998; amended January 1, 2003.)

3.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 (Minnesota Statutes, section 631.425) should be awarded at the rate of one day for each day served.*

(Added August 1, 1998.)

3.C.06. *The Commission's policy is that sentencing should be neutral with respect to the economic status of felons. 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. If credit for time spent in custody were immediately deducted from the sentence instead, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond. 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.*

(Amended August 1, 1993; renumbered and amended August 1, 1998; amended August 1, 2008.)

D. Certified Juveniles

When a juvenile has been referred to the district court for trial as an adult pursuant to Minnesota Statutes, section 260B.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.

(Amended effective August 1, 2007.)

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 Minnesota Statutes, section 609.342, 609.343, 609.344, 609.345, or 609.365, or is convicted under Minnesota Statutes, section 609.17, of an attempt to commit an act proscribed by Minnesota Statutes, section 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 Minnesota Statutes, section 609.115.

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, Minnesota Statutes, section 609.115, subdivision 10.)

(Added effective August 1, 2010.)

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.

(Added effective August 1, 1986; amended April 9, 1987; amended effective August 1, 1997; amended effective August 1, 2010.)

4. 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 non-imprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
Assault, 1st Degree Controlled Substance Crime, 1st Degree	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
Aggravated Robbery, 1st Degree Controlled Substance Crime, 2nd Degree	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
Felony DWI	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ²
Controlled Substance Crime, 3rd Degree	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
Residential Burglary Simple Robbery	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
Nonresidential Burglary	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
Theft Crimes (Over \$5,000)	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
Theft Crimes (\$5,000 or less) Check Forgery (\$251-\$2,500)	2	12 ¹	12 ¹	13	15	17	19	21 18-25
Sale of Simulated Controlled Substance	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22

- ☐ Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section 2.E. Mandatory Sentences, for policy regarding those sentences controlled by law.

- ☒ 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. See, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections 2.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and 2.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

(Amended effective August 1, 1981; amended effective November 1, 1983; amended effective August 1, 1984; amended effective August 1, 1985; amended effective August 1, 1987; amended effective August 1, 1989; amended effective August 1, 1992; amended effective August 1, 1993; amended effective August 1, 1994; amended effective August 1, 1996; amended effective August 1, 1997; amended effective August 1, 2000; amended effective August 1, 2002; amended effective January 1, 2003; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; effective August 1, 2011.)

**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 Minnesota Statutes, section 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

(Added effective August 1, 1993; amended effective August 1, 1995; amended effective August 1, 1996; amended effective August 1, 1997; amended effective August 1, 2002.)

SEX OFFENDER 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 non-imprisonment felony sentences are subject to jail time according to law.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
CSC 1st Degree	A	144 144-173	156 144-187	168 144-202	180 153-216	234 199-281	306 260-360	360 306-360 ²
CSC 2nd Degree-(c)(d)(e)(f)(h) Prostitution; Sex Trafficking 1st Degree-1(a)	B	90 90-108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300	300 255-300 ²
CSC 3rd Degree-(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree-1a	C	48 41-58	62 53-74	76 65-91	90 77-108	117 99-140	153 130-180	180 153-180 ²
CSC 2nd Degree-(a)(b)(g) CSC 3rd Degree-(a)(b) ² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)	D	36	48	60 51-72	70 60-84	91 77-109	119 101-143	140 119-168
CSC 4th Degree-(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography ²	E	24	36	48	60 51-72	78 66-94	102 87-120	120 102-120 ²
CSC 4th Degree-(a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)	F	18	27	36	45 38-54	59 50-71	77 65-92	84 71-101
CSC 5th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct ²	G	15	20	25	30	39 33-47	51 43-60	60 51-60 ²
Registration Of Predatory Offenders	H	12 ¹ 12 ¹ -14	14 12 ¹ -17	16 14-19	18 15-22	24 20-29	30 26-36	36 31-43

- ☐ Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See Guidelines Section 2.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 offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ One year and one day

² M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See, Guidelines Sections 2.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and 2.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

(Added effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2011.)

**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 Minnesota Statutes, section 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 this 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	84	56	28
14	9 1/3	4 2/3	90	60	30
15	10	5	91	60 2/3	30 1/3
16	10 2/3	5 1/3	102	68	34
18	12	6	110	73 1/3	36 2/3
20	13 1/3	6 2/3	117	78	39
24	16	8	119	79 1/3	39 2/3
25	16 2/3	8 1/3	120	80	40
27	18	9	130	86 2/3	43 1/3
30	20	10	140	93 1/3	46 2/3
36	24	12	144	96	48
39	26	13	150	100	50
40	26 2/3	13 1/3	153	102	51
45	30	15	156	104	52
48	32	16	168	112	56
51	34	17	180	120	60
59	39 1/3	19 2/3	195	130	65
60	40	20	234	156	78
62	41 1/3	20 2/3	255	170	85
70	46 2/3	23 1/3	300	200	100
76	50 2/3	25 1/3	306	204	102
77	51 1/3	25 2/3	360	240	120
78	52	26			

(Added effective August 1, 2006; amended effective August 1, 2008.)

5. OFFENSE SEVERITY REFERENCE TABLE

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minnesota Statutes, section 609.3455, subdivision 2, are excluded from the guidelines by law.

SEVERITY LEVEL	OFFENSE	STATUTE
11	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)
10	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
9	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)
	Death of an Unborn Child in the Commission of Crime	609.268, subd. 1
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(a)
	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)
	Tampering with Witness, Aggravated First Degree	609.498, subd. 1b
8	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 Vehicular Homicide or Operation	609.21, subd. 1a(a)
	Drive-By Shooting (toward a person or occupied motor vehicle or building)	609.66, subd. 1e(b)
	Escape from Custody	609.485, subd. 4(b)
	Great Bodily Harm Caused by Distribution of Drugs	609.228
	Identity Theft	609.527, subd. 3(5)
	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)
	Riot 1	609.71, subd. 1
7	Financial Exploitation of a Vulnerable Adult (over \$35,000)	609.2335
	First Degree (Felony) Driving While Impaired	169A.24
6	Aggravated Robbery 2	609.245, subd. 2
	Assault 2	609.222
	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	152.023
	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)
	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)
5	Arson 2	609.562
	Burglary 2	609.582, subd. 2(a)(1) & (2), 2(b)
	Check Forgery over \$35,000	609.631, subd. 4(1)
	Criminal Vehicular Homicide or Operation	609.21, subd. 1a(b)
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(b)
	Financial Exploitation of a Vulnerable Adult (over \$5,000)	609.2335
	Financial Transaction Card Fraud over \$35,000	609.821, subd. 3(1)(i)
	Interference with Emergency Communications	609.776
	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 of Substances with Intent to Manufacture Methamphetamine	152.0262

	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)
	Simple Robbery	609.24
	Stalking (third or subsequent violations)	609.749, subd. 4(b)
	Stalking (pattern of stalking conduct)	609.749, subd. 5
	Tampering with Witness in the First Degree	609.498, subd. 1a
4	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
	Bribery, Advancing Money, and Treating Prohibited	211B.13
	Bring Contraband into State Prison	243.55
	Bring Dangerous Weapon into County Jail	641.165, subd. 2(b)
	Burglary 2	609.582, subd. 2(a)(3) & (4)
	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)
	Dangerous Weapons on School Property	609.66, subd. 1d(a)
	Domestic Assault	609.2242, subd. 4
	Domestic Assault by Strangulation	609.2247
	False Imprisonment (substantial bodily harm)	609.255, subd. 3
	Financial Exploitation of a Vulnerable Adult (\$5,000 or less)	609.2335
	Fleeing a Peace Officer (substantial bodily harm)	609.487, subd. 4(c)
	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(1)
	Perjury	609.48, subd. 4(2)
	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (2nd or subsequent violation)	609.526
	Receiving Stolen Property (firearm)	609.53
	Security Violations (over \$2,500)	80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
	Sports Bookmaking	609.76, subd. 2

	Stalking (aggravated violations)	609.749, subd. 3(a), (b)
	Stalking (2nd or subsequent violation)	609.749, subd. 4(a)
	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 a Domestic Abuse No Contact Order	629.75, subd. 2(d)
	Violation of an Order for Protection	518B.01, subd. 14(d)
	Violation of Harassment Restraining Order	609.748, subd. 6(d)
	Weapon in Courthouse or Certain State Buildings	609.66, subd. 1g
3	Anhydrous Ammonia (tamper/theft/transport)	152.136
	Arson 3	609.563
	Bringing Stolen Goods into State (over \$5,000)	609.525
	Check Forgery (over \$2,500)	609.631, subd. 4(2)
	Coercion	609.27, subd. 1(1)
	Coercion (\$2,500, or more)	609.27, subd. 1(2), (3), (4), & (5)
	Computer Damage (over \$2,500)	609.88
	Computer Theft (over \$2,500)	609.89
	Criminal Vehicular Homicide or Operation	609.21, subd. 1a(c)
	Damage or Theft to Energy Transmission, Telecommunications	609.593
	Damage to Property	609.595, subd. 1(1)
	Damages; Illegal Molestation of Human Remains; Burials; Cemeteries	307.08, subd. 2(a)
	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)
	Disarming a Peace Officer	609.504
	Drive-By Shooting (unoccupied motor vehicle or building)	609.66, subd. 1e(a)
	Embezzlement of Public Funds (over \$2,500)	609.54
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(c)
	Escape from Civil Commitment	609.485, subd. 4(a)(5)
	Escape from Custody	609.485, subd. 4(a)(1)
	False Imprisonment	609.255, subd. 2
	False Traffic Signal	609.851, subd. 2
	Financial Transaction Card Fraud (over \$2,500)	609.821, subd. 2(1), (2), (5), (6), (7), & (8)
	Firearm Silencer (public housing, school, or park zone)	609.66, subd. 1a(a)(1)

	Gambling Taxes	297E.13, subd. 1-4
	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
	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
	Motor Vehicle Use Without Consent	609.52, subd. 2(17)
	Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew	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)
	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000, or more)	609.526, subd. 2(1)
	Receiving Stolen Goods (over \$5,000)	609.53
	Rustling and Livestock Theft (over \$2,500)	609.551
	Security Violations (\$2,500, or less)	80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
	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)
	Telecommunications and Information Services; Obtaining Services By Fraud (over \$2,500)	609.893, subd. 1
	Theft Crimes (over \$5,000)	<i>See Theft Offense List</i>
	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
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
	Bringing Stolen Goods into State (\$1,001 - \$5,000)	609.525
	Bringing Stolen Goods into State (\$501 - \$1,000, with previous conviction)	609.525
	Cellular Counterfeiting 1	609.894, subd. 4
	Check Forgery (\$251 - \$2,500)	609.631, subd. 4(3)(a)
	Coercion (\$301 - \$2,499)	609.27, subd. 1(2), (3), (4), & (5)
	Computer Damage (\$2,500, or less)	609.88
	Computer Theft (\$2,500, or less)	609.89
	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)	609.66subd. 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)
Electronic Use of False Pretense to Obtain Identity	609.527, subd. 5a
Embezzlement of Public Funds (\$2,500, or less)	609.54
Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
Failure to Control a Regulated Animal (great bodily harm or death)	346.155, subd. 10(e)
Financial Transaction Card Fraud (\$2,500, or less)	609.821, subd. 2(1), (2), (5), (6), (7), & (8)
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)
Mail Theft	609.529
Negligent Fires (damage \$2,500 or more)	609.576, subd. 1(3)(iii)
Possession or Sale of Stolen or Counterfeit Check	609.528, subd. 3(3)
Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (less than \$1,000)	609.526, subd. 2(2)
Precious Metal Dealers, Regulatory Provisions	325F.743
Receiving Stolen Goods (\$5,000, or less)	609.53
Residential Mortgage Fraud	609.822
Riot 2	609.71, subd. 2
Rustling and Livestock Theft (\$2,500, or less)	609.551
Telecommunications and Information Services; Obtaining Services by Fraud (\$2,500, or less)	609.893, subd. 1
Telecommunications and Information Services; Facilitation of Telecommunications Fraud	609.893, subd. 2
Terroristic Threats	609.713, subd. 2
Theft Crimes (\$5,000, or less)	<i>See Theft Offense List</i>
Theft (Looting)	609.52
Theft (\$1,000, or less; risk of bodily harm)	609.52, subd. 3a(1)
Transfer Pistol to Ineligible Person	624.7141, subd. 2
Transfer Pistol to Minor	624.7132, subd. 15(b)
Unlawful Possession or Use of Scanning Device or Reencoder	609.527, subd. 5b
Wildfire Arson	609.5641, subd. 1

1	Accidents	169.09, subd. 14(a)(2)
	Assault 4	609.2231, subds. 1, 2, 3, & 3a
	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)
	Criminal Use of Real Property (movie pirating)	609.896
	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 Civil Commitment	609.485, subd. 4(a)(4)
	Escape from Custody	609.485, subd. 4(a)(2)
	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
	Forgery Related Crimes	<i>See Forgery Related Offense List</i>
	Fraudulent Drivers' Licenses and Identification Cards	609.652
	Insurance Regulations	62A.41
	Interference with Privacy (subsequent violations & minor victim)	609.746, subd. 1(e)
	Interference with Transit Operator	609.855, subd. 2(c)(1)
	Leaving State to Evade Establishment of Paternity	609.31
	Liquor Taxation (criminal penalties)	297G.19, subds. 3, 4(c), 5(c)
	Lottery Fraud	609.651, subd. 1 with subd. 4(a)

Nonsupport of Spouse or Child	609.375, subd. 2a
Pistol without a Permit (subsequent violations)	624.714, subd. 1a
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
Tax on Petroleum and Other Fuels (willful evasion)	296A.23, subd. 2
Terroristic Threats	609.713, subd. 3(a)
Theft from Abandoned or Vacant Building (\$1,000, or less)	609.52, subd. 3(3)(d)(iii)
Unlawful Acts Involving Liquor	340A.701
Voting Violations	Chapter 201, 203B, & 204C

UNRANKED Abortion	617.20; 617.22; 145.412
Accomplice After the Fact	609.495, subd. 3
Adulteration	609.687, subd. 3(3)
Aiding Suicide	609.215
Altering Engrossed Bill	3.191
Animal Fighting	343.31(a)(b)
Assaulting or Harming a Police Horse	609.597, subd. 3(1) & (2)
Bigamy	609.355
Cigarette Tax and Regulation Violations	297F.20
Collusive Bidding/Price Fixing	325D.53, subds. 1(3), 2, & 3
Computer Encryption	609.8912
Concealing Criminal Proceeds; Engaging in Business	609.496; 609.497
Corrupting Legislator	609.425
Counterfeiting of Currency	609.632
Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines	609.594
Escape with Violence from Gross Misdemeanor or Misdemeanor Offense	609.485, subd. 4(a)(3)
Failure to Report	626.556, subd. 6
Falsely Impersonating Another	609.83
Female Genital Mutilation	609.2245
Forced Execution of a Declaration	145B.105
Fraudulent or Improper Financing Statements	609.7475
Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction)	609.76, subd. 3, 4, 5, 6, & 7
Hazardous Wastes	609.671

	Horse Racing - Prohibited Act	240.25
	Incest	609.365
	Insurance Fraud - Employment of Runners	609.612
	Interstate Compact Violation	243.161
	Issuing a Receipt for Goods One Does Not Have	227.50
	Issuing a Second Receipt Without "Duplicate" On It	227.52
	Killing or Harming a Public Safety Dog	609.596, subd. 1
	Labor Trafficking	609.282
	Lawful Gambling Fraud	609.763
	Metal Penetrating Bullets	624.74
	Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws	116C.835
	Misprision of Treason	609.39
	Motor Vehicle Excise Tax	297B.10
	Obscene Materials; Distribution	617.241, subd. 4
	Obstructing Military Forces	609.395
	Pipeline Safety	299J.07, subd. 2
	Police Radios During Commission of Crime	609.856
	Racketeering, Criminal Penalties (RICO)	609.904
	Real and Simulated Weapons of Mass Destruction	609.712
	Refusal to Assist	6.53
	Sale of Membership Camping Contracts	82A.03; 82A.13; 82A.25
	Service Animal Providing Service	343.21, subd. 9(e) (g)
	State Lottery Fraud	609.651, subd. 1 with 4(b) and subd. 2 & 3
	Subdivided Land Fraud	83.43
	Torture or Cruelty to Pet or Companion Animal	343.21, subd. 9(c) (d) (f) (h)
	Treason	609.385
	Unauthorized Computer Access	609.891
	Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	609.283
	Unlawful Transfer of Sounds; Sales	325E.201
	Warning Subject of Investigation	609.4971
	Warning Subject of Surveillance or Search	609.4975
	Wire Communications Violations	626A.02, subd. 4; 626A.03, subd. 1(b)(iii); 626A.26, subd. 2(1)(ii)
A	Criminal Sexual Conduct 1	609.342
B	Criminal Sexual Conduct 2	609.343, subd. 1(c) (d) (e) (f) (h)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree	609.322, subd. 1(a)

C	Criminal Sexual Conduct 3	609.344, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree	609.322, subd. 1a
D	Criminal Sexual Conduct 2	609.343, subd. 1(a) (b) (g)
	Criminal Sexual Conduct 3	609.344, subd. 1(a) (b) (e) (f)
	Dissemination of Child Pornography (subsequent or by predatory offender)	617.247, subd. 3
E	Criminal Sexual Conduct 4	609.345, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o)
	Use Minors in Sexual Performance	617.246, subds. 2, 3, 4
	Dissemination of Child Pornography	617.247, subd. 3
F	Criminal Sexual Conduct 4	609.345, subd. 1(a) (b) (e) (f)
	Possession of Child Pornography (subsequent or by predatory offender)	617.247, subd. 4
G	Criminal Sexual Conduct 5	609.3451, subd. 3
	Solicitation of Children to Engage in Sexual Conduct	617.352, subd. 2
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a
	Indecent Exposure	617.23, subd. 3
	Possession of Child Pornography	617.247, subd. 4
H	Failure to Register as a Predatory Offender	243.166, subd. 5(b) (c)

(Amended effective August 1, 1981; amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1984; amended effective August 1, 1985; amended effective August 1, 1986; amended effective August 1, 1987; amended effective December 16, 1987; amended effective August 1, 1988; amended effective August 1, 1989; amended effective August 1, 1991; amended effective August 1, 1992; amended effective August 1, 1993; amended effective January 1, 1994; amended effective August 1, 1994; amended effective August 1, 1995; amended effective August 1, 1996; amended effective August 1, 1997; amended effective August 1, 1998; amended effective August 1, 1999; amended effective August 1, 2000; amended effective August 1, 2001; amended effective September 14, 2001; amended effective August 1, 2002; amended effective January 1, 2003; amended effective August 1, 2003; amended effective August 8, 2003; amended effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2008; amended effective August 1, 2009; amended effective August 1, 2010; amended effective August 1, 2011.)

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

Statute Number	Offense Title
152.021, subd. 2a(a)	Manufacture any amount of Methamphetamine
152.022, subd. 1(5)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023, subd. 1(3)	Sells Sch. I, II, III to Minor (not Narcotic)
152.023, subd. 1(4)	Sells Sch. I, II, III Employs Minor (not Narcotic)
152.024, subd. 1(2)	Schedule IV or V to Minor
152.024, subd. 1(3)	Employs Minor to sell Schedule IV or V
152.0261, subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults
169.09, subd. 14(a)(1)	Accidents - Resulting in Death
169.09, subd. 14(a)(2)	Accidents - Great Bodily Harm
169A.24	First Degree DWI
243.166, subd. 5(b)	Registration of Predatory Offenders
243.166, subd. 5(c)	Registration of Predatory Offenders - 2nd or subsequent
518B.01, subd. 14(d)	Violation of an Order for Protection
609.185	Murder in the First Degree
609.19	Murder in the Second Degree
609.195	Murder in the Third Degree
609.20	Manslaughter in the First Degree
609.205	Manslaughter Second Degree
609.21, subd. 1a(a)	Criminal Vehicular Homicide
609.21, subd. 1a(b)	Criminal Vehicular Operation (Great Bodily Harm)
609.21, subd. 1a(c)	Criminal Vehicular Operation (Substantial Bodily Harm)
609.215	Aiding Suicide

609.221	Assault 1
609.222	Assault 2 - Dangerous Weapon
609.223	Assault 3
609.2231	Assault 4
609.224, subd. 4	Assault 5 - 3rd or subsequent violation
609.2241	Knowing Transfer of Communicable Disease
609.2242, subd. 4	Domestic Assault
609.2245	Female Genital Mutilation
609.2247	Domestic Assault by Strangulation
609.228	Great Bodily Harm - Distribution of Drugs
609.229, subd. 3	Crime Committed for Benefit of Gang
609.2325, subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)
609.2325, subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)
609.2325, subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245, subd. 1	Aggravated Robbery 1
609.245, subd. 2	Aggravated Robbery 2
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder 1 of Unborn Child
609.2662	Murder 2 of an Unborn Child
609.2663	Murder 3 of an Unborn Child
609.2664	Manslaughter 1 of an Unborn Child
609.2665	Manslaughter 2 of an Unborn Child
609.267	Assault 1 of an Unborn Child

609.2671	Assault 2 of an Unborn Child
609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.282	Labor Trafficking
609.322, subd. 1(a)	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the First Degree
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the Second Degree
609.324, subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution
609.342, subd. 1	Criminal Sexual Conduct 1
609.343, subd. 1	Criminal Sexual Conduct 2
609.344, subd. 1	Criminal Sexual Conduct 3
609.345, subd. 1	Criminal Sexual Conduct 4
609.3451, subd. 3	Criminal Sexual Conduct 5
609.3453	Criminal Sexual Predatory Conduct
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Internet or computer)
609.365	Incest
609.377	Malicious Punishment of Child
609.378	Child Neglect/Endangerment
609.485, subd. 4(a)(3)	Escape with Violence from GM or Misd. Offense
609.485, subd. 4(b)	Escape with Violence from Felony Offense
609.487, subd. 4(a)	Fleeing Peace Officer (Resulting in Death)
609.487, subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.498, subd. 1a	Tampering with a Witness in the First Degree

609.498, subd. 1b	Tampering with a Witness, Aggravated First Degree
609.527	Identity Theft
609.561	Arson in the First Degree
609.582, subd. 1(a)	Burglary First Degree - of Occupied Dwelling
609.582, subd. 1(b)	Burglary First Degree with Dangerous Weapon
609.582, subd. 1(c)	Burglary First Degree with Assault
609.582, subd. 2(a)(1)	Burglary Second Degree - Dwelling
609.582, subd. 2(a)(2)	Burglary Second Degree - Bank
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)
609.594, subd. 2	Damage to Property - Critical Public Service Facilities
609.66, subd. 1e	Drive-By Shooting
609.662, subd. 2(b)(1)	Duty to Render Aid (Death or Great Bodily Harm)
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)
609.671	Hazardous Wastes
609.687, subd. 3(1)	Adulteration Resulting in Death
609.687, subd. 3(2)	Adulteration Resulting in Bodily Harm
609.71, subd. 1	Riot 1
609.712	Real/Simulated Weapons of Mass Destruction
609.713, subd. 1	Terroristic Threats - Violence Threat/Evacuation
609.713, subd. 2	Terroristic Threats - Bomb Threat
609.713, subd. 3(a)	Terroristic Threats - Replica Firearm
609.714, subd. 2	Crimes Committed in Furtherance of Terrorism
609.748, subd. 6(d)	Violation of Harassment Restraining Order
609.749, subd. 3	Stalking (Aggravated Violations)
609.749, subd. 4	Stalking (Subsequent Violations)
609.749, subd. 5	Stalking (Pattern of Conduct)

- 609.855, subd. 2(c)(1) Interference with Transit Operator
 - 609.855, subd. 5 Discharge Firearm at Occupied Transit Vehicle/Facility
 - 617.23, subd. 3 Indecent Exposure
 - 617.246, subd. 2 Use of Minors in Sexual Performance Prohibited
 - 617.246, subd. 3 Operation/Owner - Use of Minors in Sexual Perform.
 - 617.246, subd. 4 Dissemination - Use of Minors in Sexual Performance
 - 617.247, subd. 3(a) Dissemination of Pictorial Representations of Minors
 - 617.247, subd. 3(b) Dissemination by Predatory Offender
 - 617.247, subd. 4(a) Possession of Pictorial Representations of Minors
 - 617.247, subd. 4(b) Possession by Predatory Offender
 - 624.732, subd. 2 Intentional Release of Harmful Substance
 - 624.74 Metal Penetrating Bullets
 - 629.75, subd. 2(d) Violation of a Domestic Abuse No Contact Order
- (Added effective August 1, 2005; amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2009; amended effective August 1, 2010; amended effective August 1, 2011.)

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (\$5,000 or less and over \$5,000) in the Offense Severity Reference Table.

Offense Title	Statute Number	Subdivision Number
Altering Serial Number	609.52	subd. 2(10) & (11)
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)
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
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	
Receiving Stolen Property	609.53	
Refusing to Return Lost Property	609.52	subd. 2(6)
Taking Pledged Property	609.52	subd. 2(2)
Temporary Theft	609.52	subd. 2(5)
Theft	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 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 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	

(Amended effective August 1, 1982; amended effective November 1, 1983; amended effective August 1, 1986; amended effective August 1, 1987; amended effective August 1, 1990; amended effective August 1, 1996; amended effective August 1, 1998; amended effective August 1, 1999; amended effective August 1, 2000; amended effective August 1, 2001; amended effective January 1, 2003; amended effective August 8, 2003; amended effective August 1, 2007.)

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.

Offense Title	Statute Number	Subdivision Number
Altering Livestock Certificate	35.824	
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)

(Amended effective August 1, 2008.)

Targeted Misdemeanor List

(as provided for in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e))

According to Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), a targeted misdemeanor is a misdemeanor violation of:

Offense Title	Statute Number
Driving While Impaired	169A.20
Order for Protection Violation	518B.01; 629.75
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

(Added effective August 1, 2010; amended effective August 1, 2011.)

Mandatory Sentences Reference Table

This table is for convenience when applying mandatory sentences (*Guidelines Section 2.E*) and presumptive sentences (*Guidelines Section 2.C*). It is not exhaustive.

Presumptive disposition: Commit to the Commissioner of Corrections.

Presumptive duration: Mandatory minimum or duration on sentencing grid, whichever is longer.

Attempts and conspiracies: Mandatory sentences generally apply to attempted offenses under Minnesota Statutes, section 609.17, and conspiracies under Minnesota Statutes, section 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the grid time, whichever is longer. (See, *Guidelines Section 2.G*, for more information on convictions for attempts, conspiracies and other sentence modifiers.)

STATUTE	OFFENSE	PREREQUISITE OR CONDITIONS	MINI-MUM DURATION
169A.24, subd. 1(2)	Driving while Intoxicated	Prior felony DWI	Grid time
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Operation; Minnesota Statutes, section 609.21.1(2) thru (6)	Grid time
152.021	1st Degree Controlled Substance Crime	Prior felony conviction per chapter; Minnesota Statutes, chapter 152, or finding per Minnesota Statutes, section 152.18	48 months
152.022	2nd Degree Controlled Substance Crime	Prior felony conviction per chapter; Minnesota Statutes, chapter 152, or finding per Minnesota Statutes, section 152.18	36 months
152.023	3rd Degree Controlled Substance Crime	Prior felony conviction per chapter; Minnesota Statutes, chapter 152, or finding per Minnesota Statutes, section 152.18	24 months
243.166, subd. 5(b)	Violation of Predatory Offender Registration		Grid time
243.166, subd. 5(c)	Violation of Predatory Offender Registration - Subsequent offense	Prior felony Violation of Predatory Offender Registration	24 months
609.1095, subd. 3	Dangerous Offender - 3rd Violent Felony	Statute cited	Grid time
609.221, subd. 2(b)	Assault 1st Degree, Deadly Force - Peace Officer or Correctional Employee		120 months
609.221 - 609.2231	Assault	Must commit during "Term of Imprisonment" portion of executed sentence	Grid time

609.3455, subd. 3a	Dangerous (Engrained) Sex Offender	Statute cited	At least double the Grid time
609.485	Escape	Offense committed during "Term of Imprisonment" portion of executed sentence	Grid time
609.582, subd. 1(a)	1st Degree Burglary	Prior felony burglary	Grid time

DANGEROUS WEAPONS - MINNESOTA STATUTES, SECTION 609.11

STATUTE	OFFENSE	PREREQUISITE OR CONDITIONS	MINI- MUM DURA- TION
609.11, subd. 4	Dangerous Weapon (Other than firearm)	Weapon is an element of crime	1 year and 1 day
609.11, subd. 4	Dangerous Weapon (Other than firearm) - Subsequent offense	Current dangerous weapon offense (other than firearm) with prior dangerous weapon offense Weapon is an element of crime	36 months
609.11, subd. 5(a)	Firearm	Weapon is an element of crime	36 months
609.11, subd. 5(a)	Firearm - Subsequent offense	Current firearm offense with prior firearm or dangerous weapon offense Weapon is an element of crime	60 months
609.165 or 624.713.1(2)	Certain Persons not to have Firearms		60 months

(Added effective August 1, 2009; amended effective August 1, 2011.)

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 Minnesota Statutes, section 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 Minnesota Statutes, section 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 NUMBER	OFFENSE TITLE	SEVERITY LEVEL
3.191	Altering Engrossed Bill	unranked
6.53	Refusal to Assist	unranked
35.824	Altering Livestock Certificate	1
62A.41	Insurance Regulations	1
80A.68 or 80B.10, subd. 1 or 80C.16, subd. 3(a)(b)	Securities Violation (over \$2,500)	4
80A.68 or 80B.10, subd. 1 or 80C.16, subd. 3(a)(b)	Securities Violation (\$2,500, or less)	3
82A.03; 82A.13; or 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
116C.835	Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws	unranked
145.412	Abortion	unranked
145B.105	Forced Execution of a Declaration	unranked
152.021	Controlled Substance Crime 1	9
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine	9
152.022	Controlled Substance Crime 2	8
152.023	Controlled Substance Crime 3	6 ³
152.024	Controlled Substance Crime 4	4
152.025	Controlled Substance Crime 5	2
152.0261	Importing Controlled Substances Across State Borders	9
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	5
152.097	Sale of Simulated Controlled Substance	1
152.136	Anhydrous Ammonia (tamper/theft/transport)	3
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	3
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 ³
176.178	Workers Compensation Fraud (over \$5,000)	3
176.178	Workers Compensation Fraud (\$5,000, or less)	2
201, 203B, 204C (Chapters)	Voting Violations	1
211B.13	Bribery, Advancing Money, and Treating Prohibited	4

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(b)	Registration of Predatory Offenders	H
243.166, subd. 5(c)	Registration of Predatory Offenders (2nd or subsequent violations)	H
243.55	Bringing Contraband into State Prison	4
256.98	Welfare Fraud (over \$5,000)	3
256.98	Welfare Fraud (\$5,000, or less)	2
256.984	False Declaration	1
268.182	False Representations (over \$5,000)	3
268.182	False Representations (\$5,000 or less)	2
289A.63	Tax Evasion Laws	3
296A.23, subd. 2	Tax on Petroleum and Other Fuels (Willful Evasion)	1
297B.10	Motor Vehicle Excise Tax	unranked
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
297G.19, subd. 3, 4(c), 5(c)	Liquor Taxation (Criminal Penalties)	1
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
307.08, subd. 2(a)	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
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 (a)(b)	Animal Fighting	unranked
346.155	Failure to Control a Regulated Animal (Great bodily harm or death)	2
349.2127, subd. 1-6; 349.22, subd. 4	Gambling Regulations	2
393.07, subd. 10	Federal Food Stamp Program (over \$5,000)	3
393.07, subd. 10	Federal Food Stamp Program (\$5,000, or less)	2
471.392	False Declaration of Claim (over \$5,000)	3
471.392	False Declaration of Claim (\$5,000, or less)	2
514.02, subd. 1(b)	Non-payment for Improvement (over \$5,000; Proceeds of Payments; Acts Constituting Theft)	3
514.02, subd. 1(b)	Non-payment for Improvement (\$5,000, 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
609.21, subd. 1a(a)	Criminal Vehicular Homicide or Operation (Death)	8
609.21, subd. 1a(b)	Criminal Vehicular Homicide or Operation - (Great Bodily Harm)	5
609.21, subd. 1a(c)	Criminal Vehicular Homicide or Operation (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 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 and Emergency Medical Personnel)	1
609.2231, subd. 3	Assault 4 (Bodily Harm, Corrections Employee)	1 ⁴
609.2231, subd. 3a	Assault 4 (Bodily Harm, Secure Treatment Facility Personnel)	1 ⁴
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 ⁶
609.2242, subd. 4	Domestic Assault	4
609.2245	Female Genital Mutilation	unranked
609.2247	Domestic Assault by Strangulation	4
609.228	Great Bodily Harm (Distribution of Drugs)	8
609.229, subd. 3(a)	Crime Committed for Benefit of Gang	see note ⁷
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 Vulnerable Adult (Great Bodily Harm)	8
609.2325, subd. 3(a)(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
609.2335	Financial Exploitation of Vulnerable Adult (over \$35,000)	7
609.2335	Financial Exploitation of Vulnerable Adult (over \$5,000)	5
609.2335	Financial Exploitation of Vulnerable Adult (\$5,000, 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 Custodial or Parental Rights	1
609.26, subd. 6(a)(2)	Depriving Another of Custodial 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 Commission of Crime	9
609.268, subd. 2	Injury of an Unborn Child in Commission of Crime	4
609.27, subd. 1(1)	Coercion (Threat Bodily Harm)	3
609.27, subd. 1(2)(3)	Coercion (Property Value over \$2,500)	3
(4)(5)		
609.27, subd. 1(2)(3)	Coercion (Property Value \$301 - \$2,500)	2
(4)(5)		
609.282	Labor Trafficking	unranked

609.283	Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	unranked
609.31	Leaving State to Evade Paternity	1
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree	B
609.322, subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	see note ⁸
609.322, subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree	C
609.324, subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution	9
609.324, subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution	5
609.324, subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution	3
609.3242, subd. 2(2)	Prostitution Crimes (gross misd. level) Committed in School or Park Zones	1
609.342	Criminal Sexual Conduct 1	A
609.343, subd. 1(a)(b)(g)	Criminal Sexual Conduct 2	D
609.343, subd. 1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2	B
609.344, subd. 1(a)	Criminal Sexual Conduct 3 (By definition perpetrator must be a juvenile)	D
609.344, subd. 1(b)(e)(f)	Criminal Sexual Conduct 3	D
609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 3	C
609.345, subd. 1(a)	Criminal Sexual Conduct 4 (By definition perpetrator must be a juvenile)	F
609.345, subd. 1(b)(e)(f)	Criminal Sexual Conduct 4	F
609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 4	E
609.3451, subd. 3	Criminal Sexual Conduct 5	G
609.3453	Criminal Sexual Predatory Conduct	see note ⁹
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G
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 \$5,000)	3
609.445	Failure to Pay over State Funds (\$5,000, or less)	2
609.455	Permitting False Claims Against Government (over \$5,000)	3
609.455	Permitting False Claims Against Government (\$5,000, or less)	2
609.465	Presenting False Claims to Public Officer (over \$5,000)	3
609.465	Presenting False Claims to Public Officer (\$5,000, or less)	2
609.466	Medical Assistance Fraud (over \$5,000)	3
609.466	Medical Assistance Fraud (\$5,000, or less)	2
609.48 subd. 4.(1)	Perjury (Felony Trial)	5
609.48, subd. 4(2)	Perjury (Other Trial)	4
609.485, subd. 4(a)(1)	Escape	3 ⁵
609.485, subd. 4(a)(2)	Escape, Mental Illness	1
609.485, subd. 4(a)(3)	Escape with Violence from GM or Misdemeanor	unranked
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1
609.485, subd. 4(a)(5)	Escape from Civil Commitment, Sexually Dangerous Persons	3
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
609.493	Solicitation of Mentally Impaired Persons	see note ¹⁰
609.494, subd. 2(b)	Solicitation of Juveniles	see note ¹¹
609.495, subd. 1	Aiding an Offender to Avoid Arrest	1
609.495, subd. 3	Accomplice after the Fact	unranked
609.495, subd. 4	Taking Responsibility for Criminal Acts	see note ¹²
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
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¹ Includes offenses sentenced according to Minnesota Statutes, section 609.52, subdivision 3(3)(d).

² See *Comment 2A.05*, for commentary on motor vehicle offense severity levels.

³ See Section 2.C., Presumptive Sentence, and Mandatory Sentences Reference Table, to determine the presumptive disposition.

⁴ See Section 2.C., Presumptive Sentence, and Mandatory Sentences Reference Table, to determine the presumptive disposition for a felony assault committed by an inmate serving an executed term of imprisonment or for assault on secure treatment facility personnel.

⁵ See Section 2.C., Presumptive Sentence, and Mandatory Sentences Reference Table, to determine the presumptive disposition for an escape from an executed sentence.

⁶ See Section 2.A., Offense Severity, to determine the presumptive sentence. See *Comment 2.A.03*, for additional information on determining the presumptive sentence.

⁷ See Section 2.A., Offense Severity, and 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment 2.A.03*, for additional information on determining the presumptive sentence.

⁸ See Guidelines Section 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

⁹ See Guidelines Sections 2.A., Offense Severity, and 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment 2.A.03*, for additional information on determining the presumptive sentence.

¹⁰ See Guidelines Section 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

¹¹ See Guidelines Section 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

¹² See Guidelines Section 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

¹³ See Guidelines Section 2.A., Offense Severity, to determine the severity level.

¹⁴ See Guidelines Section 2.A., Offense Severity, to determine the severity level.

¹⁵ See Guidelines Sections 2.A., Offense Severity, and 2.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment 2.A.03*, for additional information on determining the presumptive sentence.

(Amended effective August 1, 2006; amended effective August 1, 2007; amended effective August 1, 2008; amended effective August 1, 2009; amended effective August 1, 2010; amended effective August 1, 2011.)

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