

# SENTENCING GUIDELINES

## Minnesota Sentencing Guidelines and Commentary

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# Minnesota Sentencing Guidelines and Commentary

Effective August 1, 2015

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The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history. Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant sentencing criteria substantially different from a typical case should 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. The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.

3. Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.

4. Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or 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.

5. Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated.

**B. Definitions**

As used in these Sentencing Guidelines (or "Guidelines"), the following terms have the meanings given.

1. Commitment. "Commitment" occurs when the offender is sentenced to the custody of the Commissioner of Corrections.

2. Concurrent Sentence. When the court orders sentences to be "concurrent," the court is ordering that multiple sentences be served at the same time.

3. Consecutive Sentence. When the court orders sentences to be "consecutive," the court is ordering that multiple sentences be served one after the other.

4. Criminal History Score. The "criminal history score" is comprised of criminal history factors detailed in section 2.B. The horizontal axis on the applicable grid represents the offender's criminal history score.

5. Departure. A "departure" is a pronounced sentence other than that recommended in the appropriate cell on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence.

a. Dispositional Departure. A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines.

(1) Aggravated Dispositional Departure. An "aggravated dispositional departure" occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

(2) Mitigated Dispositional Departure. A "mitigated dispositional departure" occurs when the Guidelines recommend a prison sentence but the court stays the sentence.

b. Durational Departure. A "durational departure" occurs when the court orders a sentence with a duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid.

(1) Aggravated Durational Departure. An "aggravated durational departure" occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid.

(2) Mitigated Durational Departure. A "mitigated durational departure" occurs when the court pronounces a sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

6. Departure Report. A "departure report" is a form completed by the sentencing court when the court pronounces a sentence that is a departure from the presumptive sentence. Under Minn. R. Crim. P. 27.03, subd. 4(c), the form must be completed and submitted to the Sentencing Guidelines Commission within 15 days after sentencing.

7. Executed Sentence. An "executed sentence" is the total period of time for which an inmate is committed to the custody of the Commissioner of Corrections (sent to prison). Under Minnesota Statutes, section 244.101, the sentence consists of two parts: a minimum term of imprisonment and a maximum period of supervised release.

a. Term of Imprisonment. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the "term of imprisonment" (incarceration) is equal to two-thirds of the executed sentence.

b. Supervised Release Term. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the "supervised release term" is a period of mandatory community supervision, which is served following the end of the term of imprisonment, and is equal to one-third of the executed sentence less any applicable disciplinary confinement period.

8. Extended Jurisdiction Juvenile (EJJ). An "extended jurisdiction juvenile" is a child who, under the procedures in Minnesota Statutes, section 260B.130, has been given a stayed adult sentence and a juvenile disposition, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first birthday.

9. Factfinder. The "factfinder" or finder of fact determines the facts in the case, and may be either the court or the jury.

10. Hernandize. "Hernandize" (or "Hernandizing") is the unofficial term for the process described in section 2.B.1.e of counting criminal history when multiple offenses are sentenced on the same day before the same court.

11. Local Confinement. "Local confinement" is a term of incarceration of up to one year served in a local facility, and may be pronounced by the court as a condition of probation.

12. Mandatory Minimum. The "mandatory minimum" is a minimum executed sentence duration specified in statute for offenders convicted of certain felony offenses.

13. Presumptive Sentence. "Presumptive sentences" are those sentences provided on the Sentencing Guidelines Grids. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.

a. Presumptive Disposition. The "presumptive disposition" is the recommendation for either a commitment or a stayed sentence.

(1) Presumptive Commitment. A "presumptive commitment" is a recommended disposition of imprisonment for cases contained in cells outside of the shaded area on the Grids.

(2) Presumptive Stayed Sentence. A "presumptive stayed sentence" is a recommendation for a stayed sentence for cases contained in the cells within the shaded area on the Grids.

b. Presumptive Duration. The "presumptive duration" is the recommended fixed sentence length in months found in the appropriate cell on the applicable Grid.

c. Presumptive Range. The "presumptive range" is provided for a sentence that is a presumptive commitment. Pursuant to Minnesota Statutes, section 244.09, subdivision 5, clause (2), the range is 15 percent lower and 20 percent higher than the fixed duration displayed in each cell on the Grids.

14. Sentence Modifier. A "sentence modifier" is a statute that aids in defining the punishment for the underlying offense. A sentence modifier can affect either or both the duration and the disposition of the presumptive sentence. See section 2.G for policies relating to determining the presumptive sentence for offenses that include a sentence modifier.

15. Sentencing Guidelines Grids. The "Sentencing Guidelines Grids" (or "Grids") display presumptive sentences for felony offenses according to the severity level of the offense (vertical axis) and offender's criminal history score (horizontal axis).

a. Sex Offender Grid. The "Sex Offender Grid" displays the presumptive sentences for criminal sexual conduct, failure to register as a predatory offender, and related offenses as shown on the Sex Offender Grid.

b. Standard Grid. The "Standard Grid" displays the presumptive sentences for felony offenses not on the Sex Offender Grid.

16. Sentencing Worksheet. The "Sentencing Worksheet" (or "Worksheet") is a form completed by probation at the direction of the court under Minnesota Statutes, section 609.115, subdivision 2a. The Worksheet reflects the severity of the current conviction offense, applicable history as calculated under Sentencing Guidelines policies, and the presumptive sentence as reflected in the appropriate cell of the applicable Grid. A separate Worksheet should be completed for all felony-level offenses receiving a stayed or imposed sentence, or a stay of imposition. This includes offenses that receive a life sentence and felony convictions for which the court imposes a gross misdemeanor or misdemeanor sentence.

17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high

(Severity Level A) to low (Severity Level H). Offenses listed within each severity level are deemed equally serious.

18. Statutory Maximum. The "statutory maximum" is the maximum sentence duration provided for the offense in statute (e.g., "imprisonment for not more than 15 years").

19. Stayed Sentence. A "stay of sentence" may be accomplished by either a stay of imposition or a stay of execution. There are two steps in sentencing: the imposition of a sentence and the execution of the sentence 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. Stay of Imposition. A "stay of imposition" occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence. If the offender successfully completes the stay, the case is discharged, and the conviction is deemed a misdemeanor under Minnesota Statutes, section 609.13, but is still included in criminal history under section 2.B.

b. Stay of Execution. A "stay of execution" occurs when the court accepts and records a finding or plea of guilty, and a prison sentence is pronounced, but is not executed. If the offender successfully completes the stay, the case is discharged, but the offender continues to have a record of a felony conviction, which is included in criminal history under section 2.B.

## 2. DETERMINING PRESUMPTIVE SENTENCES

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date of the conviction offense, except that:

(1) If multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.

(2) If offenses have been aggregated under one of the following statutes, or as otherwise permitted by statute, the date of the earliest offense should be used as the date of the conviction offense:

<b>Statute Number</b>	<b>Offense Title</b>
349.2127, subds. 2 and 6	Gambling Regulations
609.322, subd. 1c	Solicitation, Promotion, and Inducement of Prostitution; Sex Trafficking
609.52, subd. 3(5)	Theft
609.527, subd. 7	Identity Theft
609.535, subd. 2a(b)	Issuance of Dishonored Checks
609.551, subd. 3	Rustling and Livestock Theft
609.595	Criminal Damage to Property
609.631, subd. 4	Check Forgery
609.632, subd. 5	Counterfeiting Currency
609.763, subd. 3	Lawful Gambling Fraud
609.821, subd. 3	Financial Transaction Card Fraud
609.86, subd. 3(2)	Commercial Bribery
609.893, subd. 3	Telecommunications Fraud
609.895, subd. 3	Counterfeited Intellectual Property

The presumptive sentence is found in the cell of the appropriate Grid located at the intersection of the criminal history score and the severity level. The Grids represent the two dimensions most important in sentencing decisions.

**A. Offense Severity**

1. General Rule. The applicable offense severity level is determined by the conviction of offense, not the charging offense. The severity level for each felony offense is found in section 5.A, Offense Severity Reference Table.

2. Theft and Damage to Property; Foreseeable Risk of Bodily Harm. For an offender sentenced for theft under Minnesota Statutes, section 609.52, subdivision 3a, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table if the offense creates a foreseeable risk of bodily harm to another and:

a. the violation involves a monetary value over \$1,000; or

b. the violation involves a monetary value between \$500 and \$1,000, and the offender has been convicted within the preceding five years for an offense under Minnesota Statutes, section 609.52, subdivision 3.

3. First-Degree Murder. A severity level has not been assigned to first-degree murder because by law the punishment is a mandatory life sentence.

4. Unranked Offenses. Some offenses are designated as unranked offenses. When the court sentences an unranked offense, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. The court may consider, but is not limited to, the following factors:

a. the gravity of the specific conduct underlying the unranked offense;

b. the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;

c. the conduct of and severity level assigned to other offenders for the same unranked offense; and

d. the severity level assigned to other offenders engaged in similar conduct.

If an offense is omitted from the Offense Severity Reference Table, the offense is considered unranked.

5. Attempts, Conspiracies, and Other Sentence Modifiers. When the current offense includes a sentence modifier, such as attempt or conspiracy, the severity level is found by determining the severity level for the underlying offense. Determining the presumptive sentence for these offenses is described in section 2.G.

**Comment**

*2.A.01. The date of the offense is important because the offender's age at the time of the offense will determine whether the juvenile record is considered, and the date of the offense might determine whether a custody status point should be given and the order of sentencing with multiple convictions.*

*2.A.02. If multiple offenses are an element of the offense and the determination of which presumptive sentence applies depends on the offense date, the date of the conviction offense must be determined by the factfinder. See State v. DeRosier, 719 N.W.2d 900 (Minn. 2006) (where defendant was charged with first-degree criminal sexual conduct occurring from June through August of 2000 and the presumptive sentence increased on August 1, 2000, from 86 to 144 months, the court erred when it made a finding without a jury that the offense occurred after the effective date of the increased presumptive sentence).*

*2.A.03. If the offense occurred on or before April 30, 1980, the Sentencing Guidelines should not be used to sentence the case.*

*2.A.04. An unranked offense typically has one or more of the following characteristics: (1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense is new and the severity of a typical offense cannot yet be determined. 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. Practitioners can contact the Commission for information on severity levels assigned to unranked offenses.*

**2.A.05.** *For Theft of a Motor Vehicle, to be ranked at Severity Level 4, the offender must be convicted under the general theft statute, Minnesota Statutes, section 609.52, subdivision 2, paragraph (a), clause (1), and the offense must involve theft of a motor vehicle. 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.*

**2.A.06.** *When a sentencing worksheet is completed under Minnesota Statutes, section 609.115, subdivision 2a, for first-degree murder, Severity Level 12 should be used.*

**2.A.07.** *When an offender is convicted of two or more felony offenses arising from a single behavioral incident, Minnesota Statutes, section 609.035, "contemplates that a defendant will be punished for the 'most serious' of the offenses." State v. Kebaso, 713 N.W.2d 317, 322 (Minn. 2006). When this occurs, the applicable severity level to use in determining the presumptive sentence is the severity level assigned to the offense being sentenced, which is ordinarily the most serious offense.*

## **B. Criminal History**

The horizontal axis on the Sentencing Guidelines Grids is the criminal history score. An offender's criminal history score is the sum of points from eligible:

- (1) prior felonies;
- (2) custody status at the time of the offense;
- (3) prior misdemeanors and gross misdemeanors; and
- (4) prior juvenile adjudications.

This section details the requirements for calculating the criminal history points in each of these areas. This section also details the requirements for calculating criminal history points for convictions from jurisdictions other than Minnesota and convictions for enhanced felonies.

### ***Comment***

**2.B.01.** *The 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 the Guidelines, the conviction offense is the primary factor, and criminal history is a secondary factor in dispositional decisions. Prior to enactment of the Guidelines, 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.*

**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.*

**2.B.03.** *Minnesota Statutes, section 609A.03, subdivision 7a, paragraph (b), provides, in part:*

*Notwithstanding the issuance of an expungement order:*

*(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correction services;*

*(2) when a criminal justice agency seeks access to a record that was sealed under Minnesota Statutes, section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte*

*court order after stating a good-faith basis to believe that opening the record may lead to relevant information.*

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a. and b., to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

a. Current Offense on Standard Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

<b>Current Offense on Standard Grid</b>	
<b>SEVERITY LEVEL</b>	<b>POINTS</b>
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. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

<b>Current Offense on Sex Offender Grid</b>	
<b>SEVERITY LEVEL</b>	<b>POINTS</b>
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. Felony Decay Factor. A prior felony sentence or stay of imposition following a felony conviction must 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.

d. Assigning Felony Weights - Previous Court Appearances Resulting in Multiple Sentences. Following are exceptions to including prior felonies in criminal history when multiple felony sentences were imposed in a previous court appearance:

(1) Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.585,

or 609.251, include in criminal history only the weight from the offense at the highest severity level.

(2) Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.

e. Assigning Felony Weights - Current Multiple Sentences. Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced (also known as "*Hernandizing*") except as follows:

(1) Single Course of Conduct / Multiple Sentences. When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minnesota Statutes, section 152.137, 609.585, or 609.251, the conviction and sentence for the "earlier" offense does not increase the criminal history score for the "later" offense.

(2) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims, weights are given only to the two offenses at the highest severity levels.

f. Prior Offense with Attempt, Conspiracy, or Other Sentence Modifier. When a prior offense included a sentence modifier, such as attempt, conspiracy, or other sentence modifier as described in section 2.G, the prior conviction must be given the same felony weight as a completed offense.

g. Prior Offenses with No Conviction. Assign no weight to an offense for which a judgment of guilty has not been entered before the current sentencing, such as a stay of adjudication or continuance for dismissal.

h. Non-Felony Sentence. Except when a monetary threshold determines the offense classification of the prior offense (see section 2.B.7), when a prior felony conviction resulted in a non-felony sentence (misdemeanor or gross misdemeanor), the conviction must be counted in the criminal history score as a misdemeanor or gross misdemeanor conviction as indicated in section 2.B.3.

i. Total Felony Points. The felony point total is the sum of the felony weights. If the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number.

#### ***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.*

**2.B.102.** *No partial points are given -- thus, an offender 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.*

**2.B.103.** *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.*

**2.B.104.** *The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. For that reason, the severity level of the prior offense is based on the severity level in effect when the offender commits the current offense.*

**2.B.105.** *If an offense has been repealed, but the elements of that offense have been incorporated into another felony statute, determine the appropriate severity level based on the severity level ranking for the current felony offense containing those similar elements. For example, in 2010, the Legislature recodified violations of domestic abuse no contact orders from Minnesota Statutes, section 518B.01, subdivision 22, paragraph (d), into Minnesota Statutes, section 629.75, subdivision 2, paragraph (d). 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. For example, possession of pornographic work involving minors under Minnesota Statutes, section 617.247, subdivision 3, paragraph (a), was unranked until August 1, 2006. It is currently ranked at Severity Level E, and receives a weight of 1 1/2 points.*

**2.B.106.** *If an offense has been redefined by the Legislature, base the appropriate severity level on how the prior felony offense would currently be ranked in consideration of any new or removed elements. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.*

**2.B.107.** *In cases of multiple offenses occurring in a single course of conduct in which state law prohibits the offender from 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 the 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 court, sentencing must occur in the order in which the offenses occurred. The dates of the offenses must be determined according to the procedures in section 2.A.*

**2.B.108.** *The Commission established policies to deal with several specific situations that arise under Minnesota law: a conviction under Minnesota Statutes, section 152.137, under which offenders 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 offenders committing 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 offenders 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 under 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.*

**2.B.109.** *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).*

**2.B.110.** *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.

**2.B.111.** 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 also recognized that where such sentences were given, it was the opinion of the court that the offending behavior did not merit felonious punishment, or other circumstances existed that justified a limit on the severity of the sanction.

**2.B.112.** 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 court. 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 may also be geographical disparities. As a result of the disparity that exists in the use of stays of imposition, the Commission determined to treat stays of execution and stays of imposition the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.

**2.B.113.** 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. 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.

**2.B.114.** An offense upon which a judgment of guilty has not been entered before the current sentencing (e.g., under Minnesota Statutes, section 152.18, subdivision 1), must not be assigned any weight in computing the criminal history score.

**2.B.115.** 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 (EJJ). 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 must be treated the same as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under section 2.B.1, and corresponding commentary apply to EJJ convictions. If the EJJ conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.

**2.B.116.** Legal authorities use the terms "single course of conduct" and "single behavioral incident" interchangeably. In the Guidelines, this is referred to as "single course of conduct."

## 2. Custody Status at the Time of the Offense.

a. One Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1) through (3) are met:

(1) The offender was under one of the following custody statuses:

- (i) probation;
- (ii) parole;
- (iii) supervised release;
- (iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);
- (v) release pending sentencing;
- (vi) confinement in a jail, workhouse, or prison pending or after sentencing;

or

(vii) escape from confinement following an executed sentence.

(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction. This includes a guilty plea for an offense under Minnesota Statutes, section 152.18, subdivision 1.

(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:

- (i) a felony;
- (ii) extended jurisdiction juvenile (EJJ) conviction;
- (iii) non-traffic gross misdemeanor;
- (iv) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or
- (v) targeted misdemeanor.

(4) Early Discharge From Probation. Assign a custody point if the offender is discharged from probation but commits an offense within the initial period of probation pronounced by the court. **Do not** assign a point if the probation is revoked and the offender serves an executed sentence.

(5) Assigning Points to Offenses Committed Over Time. Assign a custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:

- (i) multiple offenses are an element of the conviction offense; or
- (ii) the conviction offense is an aggregated offense.

b. Two Custody Status Points. Assign **two** custody status points if:

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166);

(2) the offender qualifies for one custody status point, as described in section a, above, for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166).

c. Additional Duration. An **additional three months** must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, when:

- (1) a custody status point is assigned; and
- (2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more).

Three months must also be added to the lower and upper end of the range provided in the appropriate cell on the applicable Grid.

If the current conviction is an attempt, conspiracy, or other offense with a sentence modifier that reduces the presumptive sentence, the three months must be added to the cell duration before the duration is reduced as outlined in section 2.G. The presumptive duration, however, cannot be less than one year and one day.

d. No Custody Status Points Assigned. The offender must not be assigned custody status points when:

(1) The offender was committed for treatment or examination under Minn. R. Crim. P. 20.

(2) The offender was on juvenile custody status other than for an extended jurisdiction juvenile (EJJ) conviction, at the time the adult felony was committed.

(3) The offender was on custody status for a misdemeanor or gross misdemeanor DWI committed when the offender was 16 or 17 years old, and the DWI was processed in adult court under Minnesota Statutes, section 260B.225, subdivisions 3 and 8.

#### **Comment**

**2.B.201.** *The basic rule assigns offenders one point if they were under some form of eligible criminal justice custody status when they committed the offense for which they are now being sentenced.*

**2.B.202.** *The Commission 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, if the offender is put on probation for five years, is released from probation in three years, and commits a new crime in year four, at least one custody status point will be added to the offender's criminal history. When the 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, the offender 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 prison sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.*

**2.B.203.** *Probation given for an offense under 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.*

**2.B.204.** *Commitments under Minn. R. Crim. P. 20 and juvenile custody status are not included because, in those situations, there has been no conviction. 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 (EJJ) conviction.*

**2.B.205.** *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, gross misdemeanor reckless driving, or misdemeanor on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e). Thus, an offender who commits a new felony while on pre-trial diversion or pre-trial release on another charge does not get a custody status point. Likewise, offenders serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), do not receive a custody status point, even if the court imposed the misdemeanor sentence upon conviction of a gross misdemeanor or felony.*

**2.B.206.** *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 (DWI) offenses and the 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.*

**2.B.207.** *The most problematic consequence of a Criminal History Score of 7 or more (in excess of the maximum points differentiated by the Sentencing Guidelines Grids) 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 7 and is released pending sentencing for a Severity Level 3 offense, and he or she commits another Severity Level 3 offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. A presumption exists against consecutive sentences for most property offenses, and therefore no additional penalty results when this situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

**2.B.208.** *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 seven is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current conviction offense. 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. The Commission deems further differentiation unnecessary to achieve proportionality in sentencing.*

**2.B.209.** *The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, offenders should receive a custody status point if they become subject to one of the custody status types listed in section 2.B.2.a(1) 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.*

**2.B.210.** *When offenders on any custody status condition listed in section 2.B.2.b 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 so significant 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).*

**2.B.211.** *Assign a custody status point to an offender on any custody status type who absconds and commits a new felony offense. The custody status type depends on the form of supervision that exists when the offender commits a new offense. For example, assign a custody status point to an offender who absconds from supervised release and commits a new felony offense. The custody status type would be "supervised release."*

**3. Prior Gross Misdemeanors and Misdemeanors.** Prior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points. Four units equal one criminal history point; give no partial point for fewer than four units. Determine units as specified in this section.

a. **General Assignment of Units.** If the current conviction is for an offense other than criminal vehicular homicide or operation or felony driving while impaired (DWI), assign the offender one unit for each prior conviction of the following offenses provided the offender received a stayed or imposed sentence or stay of imposition for the conviction before the current sentencing:

(1) targeted misdemeanor, as defined in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e);

- (2) non-traffic gross misdemeanor;
- (3) gross misdemeanor driving while impaired;
- (4) gross misdemeanor refusal to submit to a chemical test;
- (5) gross misdemeanor reckless driving;
- (6) a felony conviction resulting in a misdemeanor or gross misdemeanor sentence.

b. Gross Misdemeanors Sentenced as Misdemeanors. A gross misdemeanor conviction resulting in a misdemeanor sentence for an offense not defined as a targeted misdemeanor under Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), must **not** be used to compute units.

c. Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.251, or 609.585, the offender must not be assigned more than one unit.

d. Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, assign only the two most severe offenses units in criminal history.

e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ten years has elapsed between the date of discharge from or expiration of the sentence and the date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

f. Maximum Assignment of Points. Except as provided in paragraph g, an offender cannot receive more than one point for prior misdemeanor or gross misdemeanor convictions.

g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minnesota Statutes, section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114, two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes.

h. Prior Misdemeanor or Gross Misdemeanor Driving While Impaired (DWI) Committed by Juvenile Offenders. Assign no units under this section if the offender was 16 or 17 years old when the prior misdemeanor or gross misdemeanor DWI was committed, and the DWI was processed in adult court under Minnesota Statutes, section 260B.225, subdivisions 3 and 8.

#### **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 in the criminal history score, thus an offender with three units is assigned no point value.*

**2.B.302.** *The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI-related offenses) to create a more proportional weighting scheme for prior felonies at Severity Level 1 and Severity Level 2 which receive a weight of 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.*

**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, offenders 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, gross misdemeanor reckless driving, and gross misdemeanor driving while impaired or refusal to submit to a chemical test are considered more culpable and are given an additional criminal history point.*

**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, 609.2112, 609.2113, or 609.2114, 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.*

**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, sections 152.137, 609.251, and 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 made a deliberate decision not to amend the Sentencing Guidelines. See State v. Williams, 771 N.W.2d 514 (Minn. 2009).*

**2.B.306.** *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated for felony offenses; however, given that these offenses are less serious, the decay period is ten years rather than 15.*

**2.B.307.** *Convictions that are petty misdemeanors by statutory definition, that have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or that are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02 are not used to compute the criminal history score.*

**2.B.308.** *When multiple misdemeanor or gross misdemeanor sentences arose 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.*

#### 4. Prior Juvenile Adjudications.

a. Assignment of Points for Juvenile Adjudications. Assign an offender one point for every two adjudications for felony offenses the offender committed, and for which the offender was prosecuted as a juvenile, provided that:

(1) each adjudication must have been for a separate offense or must have involved separate victims in a single course of conduct, except as provided in paragraphs c. and d. below; and

(2) the juvenile adjudications must have been for offenses committed after the offender's fourteenth birthday; and

(3) the offender was under the age of twenty-five when the offender committed the current felony.

b. Maximum Points for Juvenile Adjudications. An offender may receive only **one point** for juvenile adjudications as described in this section, except that the point limit does not apply to juvenile adjudications for offenses for which the Sentencing Guidelines would presume imprisonment if the offenses had been committed by an adult. Make this determination regardless of the criminal history score, and include offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section 2.C.

c. Single Course of Conduct / Multiple Sentences. When multiple adjudications for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.251, or 609.585, only one offense may be used in the criminal history calculation.

d. Single Course of Conduct / Multiple Victims. When the prior adjudications involve multiple offenses arising from a single course of conduct involving multiple victims, include only the two most severe offenses in criminal history.

#### **Comment**

**2.B.401.** *Juvenile history is included in the criminal history score 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 score. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

**2.B.402.** *Only juvenile adjudications for offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Exclude from consideration status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses.*

**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.*

**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.*

**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 when they committed the felony 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.*

**2.B.406.** *The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 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, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or H), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. 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.*

**2.B.407.** *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 only the most severe offense with an adjudication when 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 to the two most severe felony offenses with adjudications when 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 made a deliberate decision not to amend the Sentencing Guidelines. See State v. Williams, 771 N.W.2d 514 (Minn. 2009).*

## 5. Convictions From Jurisdictions Other Than Minnesota.

a. In General. The court must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score. The court should consider, but is not limited to, the factors in paragraphs b through e, below. Sections 2.B.1 through 2.B.7 govern the use of these convictions.

b. How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The section in which to count the non-Minnesota offense in criminal history depends on:

- (1) whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; and
- (2) the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

c. Assigning Felony Weights. Section 2.B.1 governs the weight of a prior felony conviction from a jurisdiction other than Minnesota, and must be based on the severity level of the equivalent Minnesota felony offense.

d. Federal Offenses; No Minnesota Equivalent. Federal felony offenses that received a sentence that in Minnesota would be a felony-level sentence, but for which no comparable Minnesota offense exists, must receive a weight of one in computing the criminal history score.

e. **Juvenile Offenses From Other Jurisdictions.** Minnesota law governs the inclusion of a prior felony offense from jurisdictions other than Minnesota committed by an offender who was under 18 years old in the juvenile section or adult section of the criminal history score. The offense should be included in the juvenile history section only if it meets the requirements in section 2.B.4. The prior can be included in the adult history section only if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it had occurred in Minnesota.

**Comment**

**2.B.501.** *Convictions from jurisdictions other than Minnesota include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations.*

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

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

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

**6. Felony Enhancement Due to Prior Misdemeanor or Gross Misdemeanor Convictions.**

a. **Enhanced Felonies.** When the current offense is a felony solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, the 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 cannot be used in calculating the remaining components of the offender's criminal history score.

b. **Counting Prior Misdemeanors and Gross Misdemeanors; Future Felony.** Except as provided in paragraph c., misdemeanor and gross misdemeanor offenses used to enhance the current offense must be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement must always be used in calculating the offender's criminal history score.

c. **Counting Prior Misdemeanors and Gross Misdemeanors; Felony Driving While Impaired (DWI).** If the current offense is a felony DWI offense and the offender has a prior felony DWI offense, the prior felony DWI must be used in computing the criminal history score. The prior misdemeanor and gross misdemeanor offenses used to enhance the first prior felony DWI cannot be used in the offender's criminal history. Any other misdemeanor or gross misdemeanor DWI offenses may be included as provided in section 2.B.3.g.

**Comment**

**2.B.601.** *A number of instances exist 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.*

**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.*

#### 7. Determining Offense Levels for Prior Offenses.

a. Classification of Prior Offense. The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions (see Minnesota Statutes, section 609.02, subdivisions 2 to 4a) and sentencing policies. Offenses that are petty misdemeanors by statute, or that are certified as or deemed to be petty misdemeanors under Minn. R. Crim. P. 23, must not be used to compute the criminal history score.

b. Monetary Threshold. When a monetary threshold determines the offense classification, the monetary threshold in effect when the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history score.

#### **Comment**

**2.B.701.** *The Commission recognized that the classification of criminal conduct as a felony, gross misdemeanor, misdemeanor, or petty misdemeanor is determined legally by the sentence given rather than the conviction offense.*

**2.B.702.** *A monetary threshold determines the offense classification when the value of property or services is an element of the offense. Punishment for the offense typically increases as the dollar amount increases.*

**2.B.703.** *When the offense severity level is determined by a monetary threshold, the threshold in effect when the prior offense was committed determines the offense classification in criminal history. For example, beginning August 1, 2007, the monetary threshold for a felony level Theft of Moveable Property offense under Minnesota Statutes, section 609.52, subdivision 2, paragraph (a), clause (1), was divided between Severity Level 2 and Severity Level 3 by the dollar amount of \$5,000. Prior to that, this offense would have been assigned a severity level based on a dollar amount of \$2,500. Because this was a change by the Legislature for inflation and no change was made by the Commission to the severity levels, a Theft of Moveable Property offense over \$2,500 which previously received a Severity Level of 3 and a weight of 1 point in criminal history would continue to receive that same weight.*

### **C. Presumptive Sentence**

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B above.

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.

Each cell on the Standard Grid and the Sex Offender Grid provides a fixed sentence duration. Minnesota Statutes, section 244.09, requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence. The shaded areas of the grids do not display ranges. If the duration for a sentence that is a presumptive 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.

2. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence. If the presumptive sentence duration in the appropriate cell on the applicable Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence. See Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table in Appendix 3.

3. Finding the Presumptive Sentence for Certain Offenses.

a. Sex Offenses. Under Minnesota Statutes, section 609.3455, certain sex offenders are subject to mandatory life sentences and certain repeat sex offenders are subject to presumptive executed prison sentences of at least 36 months.

(1) Mandatory Life Sentence. The Sentencing Guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release under subdivision 2 of that statute. For offenders subject to life with the possibility of release under subdivisions 3 and 4 of that statute, the court must 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.

(2) Presumptive Executed Prison Sentences of at least 36 Months. Except when a life sentence applies, if the current conviction offense is criminal sexual conduct in the first, second, third, or fourth degree (Minnesota Statutes, sections 609.342 to 609.345) or criminal sexual predatory conduct (Minnesota Statutes, section 609.3453) within 15 years of a previous sex offense conviction, under Minnesota Statutes, section 609.3455, subdivision 10, the presumptive disposition is commitment. The presumptive duration is at least 36 months, or the fixed duration indicated in the appropriate cell on the Grid, whichever is longer.

b. Burglary. If 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. Prior burglary convictions trigger the presumptive commitment even if they have decayed for criminal history purposes, as set forth in section 2.B.1.c. The presumptive duration for a burglary conviction falling under this section is the fixed duration indicated in the appropriate cell on the Grid.

c. Controlled Substances Offenses. If the current conviction offense is for a controlled substance crime in the first, second, or third degree and is a "subsequent controlled substance conviction" as defined in Minnesota Statutes, section 152.01, subdivision 16a, the presumptive disposition is commitment. A stay of adjudication under Minnesota Statutes, section 152.18, that occurred before August 1, 1999, is not a prior disposition under Minnesota Statutes, section 152.01, subdivision 16a. The prior dispositions listed in Minnesota Statutes, section 152.01, subdivision 16a, trigger the presumptive commitment unless more than ten years have elapsed since discharge from sentence or stay of adjudication. The presumptive duration for a controlled substance conviction falling under this section is the fixed duration indicated in the appropriate cell on the Grid, or the mandatory minimum, whichever is longer.

d. Driving While Impaired (DWI) Offenses. If the current conviction is for felony DWI and if, prior to the commission of the current offense, the offender had a previous conviction (as conviction is defined in Minnesota Statutes, section 609.02, subdivision 5) for a felony DWI or for a criminal vehicular homicide or operation as defined in Minnesota Statutes, section 169A.24, subdivision 1, clause (3), the presumptive disposition is commitment. Prior felony DWI or criminal vehicular homicide or operation convictions trigger the presumptive commitment even if they have decayed for criminal history purposes as set forth in section 2.B.1.c.

e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, or assault on secure treatment facility personnel is commitment. It is presumptive for escape from an executed sentence and for 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. The presumptive duration is determined by the presumptive consecutive sentencing policy (see section 2.F.1, Presumptive Consecutive Sentences).

#### **Comment**

**2.C.01.** *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, this 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.*

**2.C.02.** *In the cells outside 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 be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell on the applicable Grid is not a departure from the Guidelines, and any sentence length given that is outside the 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.*

**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. Separate tables following the Grids illustrate 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 serving the entire executed sentence in prison.*

**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, the sentence is a departure from the Guidelines.*

**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 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 on the applicable Grid, the sentence is a departure from the Guidelines.*

**2.C.06.** *There are rare instances where the presumptive sentence length exceeds the statutory maximum sentence. If this situation occurs, the statutory maximum sentence becomes the presumptive sentence. For example, Threats of Violence under Minnesota Statutes, section 609.713, subdivision 3, paragraph (a), clause (1) or (2), carries a statutory maximum sentence of 12 months and 1 day. At Severity Level 1, the statutory maximum will be exceeded when the offender reaches a Criminal History Score of 3. As another example, Soliciting Children for Sexual Conduct under Minnesota Statutes, section 609.352, carries a statutory maximum sentence of three years. At Severity Level G, the statutory maximum will be exceeded when the offender reaches a Criminal History Score of 4.*

**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 must be the longer of: (1) the duration for the attempt or conspiracy conviction; or (2) the duration for the next most severe conviction offense.*

**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 court to pronounce a minimum term of imprisonment, based on the 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 Guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable to determining the minimum term of imprisonment. See State v. Hodges, 770 N.W.2d 515 (Minn. 2009).*

**2.C.09.** *Sections 2.C.3.b and 2.C.3.d clarify that the court may consider decayed convictions when determining whether to execute a presumptively stayed sentence. See State v. Jones, 587 N.W.2d 854 (Minn. Ct. App. 1999).*

**2.C.10.** *Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.*

#### **D. Departures from the Guidelines**

1. Departures in General. The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition and within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a departure.

The court 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 pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines. A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.

a. Disposition and Duration. Departures with respect to disposition and duration are separate decisions. A court may depart from the presumptive disposition without departing

from the presumptive duration, and vice-versa. A court departing from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written departure reasons.

b. Aggravated Departure. When imposing a sentence that is an aggravated departure, it is recommended that the court pronounce a sentence 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 Guidelines.

c. Departure Report. In exercising the discretion to depart from a presumptive sentence, the court must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence. The reasons must be stated in the sentencing order or recorded in the departure report and filed with the Commission.

d. Departure Reasons. Because departures are by definition exceptions to the Guidelines, the departure factors in this section are advisory, except as otherwise established by case law.

e. Revoked Stay of Adjudication. When a felony stay of adjudication is vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentenced pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.

f. Offender's Demand for Execution. A sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.

#### **Comment**

**2.D.101.** *The departure report must be filed with the Commission within 15 days after sentencing. Minn. R. Crim. P. 27.03, subd. 4(C).*

**2.D.102.** *A defendant has the right to a jury trial to determine whether aggravating factors are proved beyond a reasonable doubt. See e.g., Blakely v. Washington, 542 U.S. 296 (2004); State v. Shattuck, 704 N.W.2d 131 (Minn. 2005); State v. Allen, 706 N.W.2d 40 (Minn. 2005). See also Minn. R. Crim. P. 7.03, 11.04, and 27 (detailing the procedures for seeking an aggravated sentence). If the departure facts are proved beyond a reasonable doubt, the court may exercise its discretion to depart from the presumptive sentence.*

**2.D.103.** *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 Guidelines sentence. The purposes of the Guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if courts 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.104.** *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 Guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to make informed policy decisions or to ensure consistency, proportionality, and rationality in sentencing.*

*Departures and their reasons highlight both the success and problems of the existing Guidelines. When a plea agreement involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain its reasons for accepting the negotiation.*

**2.D.105.** *Under Minnesota Statutes, section 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the*

*appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.*

*In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of threats of violence (Minnesota Statutes, section 609.713) in statute, so a charge of threats of violence cannot be amended from a felony to a gross misdemeanor.*

**2.D.106.** *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and Comment 2.C.10). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.*

**2.D.107.** *An offender generally has the right to demand execution of sentence. State v. Rasinski, 472 N.W.2d 645, 651 (Minn. 1991); see also Minnesota Statutes, section 609.135, subdivision 7. The Commission does not regard the execution of a presumptively stayed sentence as a departure from the Guidelines if the record, or the Court's communication to the Commission, reflects that the sentence was executed upon the offender's peremptory demand.*

**2. 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 appropriate cell on the applicable 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 defendant's exercise of constitutional rights during the adjudication process.

**Comment**

**2.D.201.** *The Commission believes that sentencing should be neutral with respect to an offender's race, sex, and income level. Accordingly, the Commission has listed employment and social factors that should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income level. 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 - e.g., 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 should demonstrate that the departure is not based on any of the excluded factors.*

**2.D.202.** *The Commission determined that the severity of an offender's sanctions should not vary depending on whether the offender exercised constitutional rights during the adjudication process.*

**2.D.203.** *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 conviction offense. For example, 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.*

**3. Factors That May Be Used As Reasons For Departure.** The following is a nonexclusive list of factors that 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 but not a mandatory minimum sentence, and either of the following exist:
  - (a) The current conviction offense is at Severity Level 1 or Severity Level 2 and the offender received all of his or her prior felony sentences during fewer than three separate court appearances; or
  - (b) The current conviction offense is at Severity Level 3 or Severity Level 4 and the offender received all of his or her prior felony sentences during one court appearance.
- (5) Other substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense.
- (6) The court is ordering an alternative placement under Minnesota Statutes, section 609.1055, for an offender with a serious and persistent mental illness.
- (7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.

**b. Aggravating Factors.**

- (1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, and the offender knew or should have known of this vulnerability.
- (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 the offender has 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;
- (b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
- (c) the offense involved the manufacture of controlled substances for use by other parties;
- (d) the offender knowingly possessed a firearm during the commission of the offense;
- (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
- (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) The offender is being sentenced as an "engrained offender" under Minnesota Statutes, section 609.3455, subdivision 3a.

(8) The offender is being sentenced as a "dangerous offender who commits a third violent crime" under Minnesota Statutes, section 609.1095, subdivision 2.

(9) The offender is being sentenced as a "career offender" under Minnesota Statutes, section 609.1095, subdivision 4.

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

(11) The offender intentionally selected the victim or the property against which the offense was 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 used another's identity without authorization to commit a crime. This aggravating factor may not be used when 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.

#### **Comment**

**2.D.301.** *The Commission provides a non-exclusive list of factors that may be used as departure reasons. The factors are intended to describe specific situations involving a small number of cases. The Commission rejects factors that are general in nature, and that 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. 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 an offender 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 the terms of restitution payment.*

**2.D.302.** *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. The Commission believes that the court is best able to distinguish these offenders, and can depart from the Guidelines accordingly.*

**2.D.303.** *The requirement that a defendant be "particularly" amenable to probation ensures that the defendant's amenability to probation distinguishes the defendant from most others and truly presents the substantial and compelling circumstances necessary to justify a departure. State v. Soto, 855 N.W.2d 303, 309 (Minn. 2014). While social or economic factors cannot justify a departure, such facts may be relevant to determining whether a defendant is particularly amenable to probation. Id at 312. In determining whether a defendant is particularly suitable to individualized treatment in a probationary setting, for example, a court is permitted to consider the defendant's age, prior record, remorse, cooperation, attitude before the court, and social support. State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982).*

**2.D.304.** *In section 2.D.3.b(3), an aggravated durational departure is permitted when 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 victim injury was established as an element of the offense. The departure is appropriate even if the prior felony offense had decayed in accordance with section 2.B.1.c. An aggravated durational departure is possible without jury determination of additional facts if victim injury is established in proving the elements of the current offense.*

**2.D.305.** *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 the courts when sentencing certain sex offenders, "dangerous offenders," and "career offenders." The use of one of these sentencing provisions would constitute a departure under the Guidelines and the court must provide written reasons specifying that the requirements of the statute have been met.*

**2.D.306.** *The aggravating factor involving groups of three or more offenders under section 2.D.3.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 2.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, for the presumptive sentence for offenders convicted of Crime Committed for Benefit of a Gang, Minnesota Statutes, section 609.229, subdivision 3, paragraph (a).*

**2.D.307.** *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when an offender 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, paragraph (a), 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 there are multiple victims of the same gender.*

## **E. Mandatory Sentences**

1. In General. When an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded area on the applicable Grid. The presumptive duration of the prison sentence is the mandatory minimum sentence in statute or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. When an offender is sentenced for an attempted offense under Minnesota Statutes, section 609.17, or conspiracy to commit an offense under Minnesota Statutes, section 609.175, and the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer. See Mandatory and Presumptive Sentences Reference Table in Appendix 1.

2. Specific Statutory Provisions. The following mandatory minimum provisions should be imposed as indicated.

a. Second- and Third-Degree Murder. Minnesota Statutes, section 609.107, Mandatory Penalty for Certain Murderers, determines the presumptive sentence for an offender sentenced under that statute.

b. Dangerous Weapon or Firearm. Minnesota Statutes, section 609.11, establishes the mandatory sentence for offenses committed with a dangerous weapon or firearm, or for possession of a firearm by an ineligible felon.

(1) Finding the Mandatory Sentence. Regardless of whether an offender would otherwise receive a presumptive stayed sentence under the Guidelines, the presumptive disposition for an offense subject to a mandatory sentence under Minnesota Statutes, section 609.11, is always commitment. The mandatory duration is established in the statute. See Dangerous Weapons - Minnesota Statutes, section 609.11, Table in Appendix 2.

(2) Departure. Minnesota Statutes, section 609.11, subdivision 8, provides that the court, on its own motion or on the prosecutor's motion, may sentence without regard to the mandatory minimum sentence if the court finds substantial and compelling reasons to do so. Sentencing under subdivision 8 is a departure as follows:

(i) Dispositional Departure. A stay of execution or stay of imposition is a dispositional departure.

(ii) Durational Departure. A sentence other than the mandatory minimum or the presumptive duration or applicable range in the appropriate cell on the applicable Grid, whichever is longer, is a durational departure.

c. Subsequent Drug Offenses Involving a Dangerous Weapon. If an offender is sentenced for a second or subsequent drug offense and is subject to Minnesota Statutes, section 609.11, subdivision 5a, the presumptive duration is the longer of either:

(1) the mandatory minimum sentence for the subsequent drug offense added to the mandatory minimum sentence for the dangerous weapon involvement; or

(2) the presumptive duration for the subsequent drug offense provided in the appropriate cell on the Standard Grid.

d. Dangerous and Repeat Felony Offenders. When an offender is sentenced under Minnesota Statutes, section 609.1095, subdivision 3, the presumptive disposition is commitment. 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.

e. Felony Driving While Impaired (DWI). When the court sentences an offender for first-degree felony driving while impaired, under Minnesota Statutes, section 169A.276, it must impose a sentence of at least 36 months. The court cannot stay imposition or adjudication of the sentence, but may stay execution.

3. Conditional Release. 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.

4. Mandatory Life Sentences. Mandatory life imprisonment sentences for first-degree murder and for sex offenses subject to Minnesota Statutes, section 609.3455, subdivision 2, are not governed by the Guidelines.

#### **Comment**

**2.E.01.** *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 of the 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 on the applicable 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 on the Standard Grid, whichever is longer. Therefore, for*

someone convicted of Assault in the Second Degree with a Criminal History Score of 0, the Guidelines presume a 21 month prison duration based on the appropriate cell on the Standard 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.

**2.E.02.** 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 is not commitment unless the case falls above the dispositional line on the applicable Grid. An example is a conviction for a Fifth-Degree Controlled Substance Crime. If the offender has previously been convicted of a controlled substance crime, the mandatory minimum law requires at least six months incarceration, which can be served in a local jail or workhouse.

**2.E.03.** Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Assault in the Second Degree under Minnesota Statutes, sections 609.222; Certain Persons Not to Have Firearms or Ammunition under Minnesota Statutes, section 624.713, subdivision 2, paragraph (b) and 609.165, subdivision 1b; Drive-By Shootings under Minnesota Statutes, section 609.66; 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 longer.

**2.E.04.** The mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minnesota Statutes, section 609.11) provides that the finder of fact must 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 finds that a dangerous weapon was involved, the mandatory minimum applies under 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 courts as well. When the prosecutor or court makes a motion to sentence apart from the mandatory minimum, it becomes legal to stay imposition or execution of sentence or to impose a lesser sentence than the mandatory minimum. When this 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 longer. 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 longer, constitutes a mitigated durational departure. Written reasons specifying the substantial and compelling nature of the circumstances and demonstrating why the sentence selected is more appropriate, reasonable or equitable than the presumptive sentence are required.

**2.E.05.** Minnesota Statutes, section 609.11, subdivision 5a, states that for a subsequent drug offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the Standard Grid for the subsequent drug offense; the presumptive duration is the longer of the two. For example: A third-degree drug offender with a Criminal History Score of 3 is convicted of a subsequent controlled substance offense and was in possession of a firearm.

*Mandatory Minimums:*           24 months Mand. Min. (Minnesota Statutes, section 152.023, subdivision 3, paragraph (b))  
   + 36 months Mand. Min. (Minnesota Statutes, section 609.11, subdivision 5, paragraph (a))  
   =60 months

vs.

*Grid Cell:*                       =39 months (Severity Level 6; Criminal History Score of 3)

## **F. Concurrent/Consecutive Sentences**

Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.

This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure.

When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.

### ***Comment***

**2.F.01.** *Consecutive sentences are a more severe sanction because the intent is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses.*

*The Commission recommends that the court consider carefully whether the purposes of the Guidelines (in terms of punishment proportional to the severity of the offense and the offender's criminal history) would be served best by concurrent rather than consecutive sentences.*

**2.F.02.** *The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The terms of imprisonment and the periods of supervised release are aggregated as well. For example, if a court executes a 44-month fixed sentence, and a 24-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections aggregates 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.*

44 months (first sentence)  
 + 24 months consecutive (second sentence)  
 =68 months (fixed sentence)

45.3 months (2/3 - term of imprisonment)  
 22.7 months (1/3 - supervised release)

### **1. Presumptive Consecutive Sentences.**

a. Criteria for Imposing a Presumptive Consecutive Sentence. Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender is:

- (i) serving an executed prison sentence;
- (ii) on escape status from an executed prison sentence;
- (iii) on supervised release; or

(iv) on conditional release following release from an executed prison sentence (see conditional release terms in section 2.E.3); and

(2) the presumptive disposition for the current offense(s) is commitment.

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 is always commitment.

b. Finding the Presumptive Duration. For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.

c. Exception When Presumptive Concurrent Sentence is Longer. If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.

d. Departure Factor. If there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.

e. Felony Driving While Impaired (DWI). Minnesota Statutes, section 169A.28, subdivision 1, requires a consecutive sentence when the court sentences an offender for a felony DWI and:

(1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and

(2) the disposition for the current offense will be probation; **but not**

(3) when the disposition for the current offense will be commitment.

If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense.

#### **Comment**

**2.F.101.** *This section establishes criteria requiring the use of consecutive sentences under the Guidelines. These are called "presumptive consecutive sentences." When consecutive sentencing is presumptive, it is a departure to give concurrent sentences.*

**2.F.102.** *When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense.*

*For example, an offender is convicted of Escape from Custody and First-Degree Burglary of an Occupied Dwelling following escape from an executed sentence. The term of imprisonment remaining on the original offense from which the offender escaped is 18 months. Each of the new offenses will have a presumptive consecutive sentence duration found at a Criminal History Score of 1: Escape from Custody (Severity Level 3), 13 months; Burglary (Severity Level 6), 27 months. The two sentences will run concurrently to each other, and the longer of the two durations will be added to the time remaining on the original term of imprisonment (here, 27 months will be added to the time remaining on the original 18-month sentence). Aggregated, the new presumptive consecutive sentence duration is 45 months.*

**2.F.103.** *A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an offender with a Criminal History Score of 6 is on supervised release. The offender has one month remaining until the sentence expires when the offender commits a theft over \$5,000 (Severity Level 3). The Guidelines would typically recommend that the theft run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.*

*1 month (before expiration of sentence)*  
 +13 months (Severity Level 3; Criminal History Score of 1)  
 =14 months consecutive

vs.

*23 months concurrent (Severity Level 3; Criminal History Score of 6)*

**2.F.104.** *If the offense is an attempt under Minnesota Statutes, section 609.17, or a conspiracy under Minnesota Statutes, section 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half - making the presumptive duration 29 months.*

## 2. Permissive Consecutive Sentences.

a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.

(1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

(i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be sentenced consecutively to a prior felony sentence that has not expired or been discharged if the prior felony conviction:

(a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or

(b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.

The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C. A non-Minnesota conviction is equivalent to a crime on the list in section 6 if it would both be defined as a felony in Minnesota, and received a sentence that in Minnesota would be a felony-level sentence, including the equivalent of a stay of imposition.

(ii) Multiple Current Felony Convictions. If the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences in section 6, the convictions may be sentenced consecutively to each other.

(iii) Felony Conviction After Escape (Non-Executed Sentence). If the offender commits and is convicted for a new felony crime while on felony escape from lawful custody - as defined in Minnesota Statutes, section 609.485 - from a non-executed felony sentence, the new felony conviction may be sentenced consecutively to the sentence for the escape or the offense for which the offender was confined.

(2) Other Offenses. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.

(i) Felony Escape. If the offender is convicted of felony escape from lawful custody - as defined in Minnesota Statutes, section 609.485 - and the offender did not escape from an executed prison sentence, the escape may be sentenced consecutively to the sentence for which the offender was confined.

(ii) Felony Conviction After Escape (Executed Sentence). If the offender committed and is convicted for a new felony crime committed while on felony escape from lawful custody - as defined in Minnesota Statutes, section 609.485 - from an executed felony sentence, the new felony may be sentenced consecutively to the sentence for the escape.

(iii) Fleeing a Police Officer; Criminal Sexual Conduct. The court may impose consecutive sentences as permitted under Minnesota Statutes, section 609.035, subdivisions 5 and 6, if both of the following occur:

(a) the offender is convicted of either of the following offenses:

(1) Fleeing a Peace Officer in a Motor Vehicle, as defined in Minnesota Statutes, section 609.487; or

(2) Criminal Sexual Conduct in the First through Fourth Degrees with force or violence, as defined in Minnesota Statutes, sections 609.342 through 609.345; and

(b) the court imposes punishment for any other crime committed by the defendant as part of the same conduct.

(iv) Felony Assault in a Local Jail or Workhouse. If the offender is convicted of felony assault committed while in a local jail or workhouse, the felony assault conviction may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment as outlined in section 2.C.

#### **Comment**

**2.F.201.** *The Commission establishes criteria that permits, but does not require, the use of consecutive sentences in instances listed in the Guidelines. This is called "permissive consecutive sentences."*

**2.F.202.** *If an offender is given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by using the zero criminal history column, or the mandatory minimum, whichever is longer. The purpose of this procedure is to count an offender's criminal history score only one time in the computation of consecutive sentence durations.*

**2.F.203.** *If the offense is an attempt under Minnesota Statutes, section 609.17, or a conspiracy under Minnesota Statutes, section 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half - making the presumptive sentence 24 months.*

**2.F.204.** *The Commission's policies on permissive consecutive sentences outline the criteria that are necessary to permit consecutive sentences without the requirement to cite reasons for departure. Courts may pronounce consecutive sentences in any other situation by citing reasons for departure. Courts 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.*

**2.F.205.** *Consecutive sentences are permissive for multiple current felony convictions even when the offenses involve one victim and a single course of conduct, but only when the presumptive disposition is commitment. However, consecutive sentencing is not permissive for multiple current felony convictions involving one victim and a single course of conduct if the court is giving an upward durational departure on any of the current conviction 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.*

**2.F.206.** *An offender given a consecutive sentence for a crime committed while using or possessing metal-penetrating bullets under Minnesota Statutes, section 624.7191, subdivision 3, can get up to the three-year statutory maximum without departing from the Guidelines. The length of the consecutive sentence is left to the discretion of the court. For example, an offender with a Criminal History Score of 0 is sentenced to a presumptive 48 months prison for aggravated robbery in the first degree, and next is sentenced to 36 months prison consecutively for possessing metal-penetrating bullets.*

3. Crime Committed for the Benefit of a Gang. When the court imposes a presumptive or permissive consecutive sentence for a crime committed for the benefit of a gang under Minnesota Statutes, section 609.229, subdivision 3, the presumptive duration includes additional months as outlined in section 2.G.

4. Pre-Guidelines Cases. If a sentence is imposed consecutively to an offense committed before May 1, 1980, the consecutive sentence begins after completion of any incarceration arising from the prior sentence.

#### **Comment**

**2.F.401.** *The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for offenders sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for offenders revoked and re-imprisoned 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 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 for the pre-Guidelines offense.*

#### **G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:**

1. In General. Sentence modifiers are statutes that aid in defining the punishment for the underlying offense. Modifiers can affect either or both the duration and the disposition of the presumptive sentence. Any change to the presumptive fixed sentence under this section must also be applied to the upper and lower ends of the range found in the appropriate cell on the applicable Grid, except that the presumptive sentence cannot be less than one year and one day, nor can it be less than any applicable mandatory minimum.

2. Attempt or Conspiracy. When an offender is sentenced for an attempted offense under Minnesota Statutes, section 609.17, or for conspiracy to commit an offense under Minnesota Statutes, section 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense. When the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer.

3. Solicitation of Juveniles or Mentally Impaired Persons. When an offender is sentenced for soliciting a juvenile under Minnesota Statutes, section 609.494, subdivision 2, paragraph (b), or for soliciting a mentally impaired person under Minnesota Statutes, section 609.493, subdivision 2, paragraph (b), the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense.

4. Conspiracy to Commit a Controlled Substance Offense. The modifying statute for Conspiracy to Commit a Controlled Substance offense under Minnesota Statutes, section 152.096, does not affect the presumptive sentence for the underlying offense.

5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree. The Commission regards the provisions in Minnesota Statutes, sections 609.342, subdivision 2, paragraph (b), and 609.343, subdivision 2, paragraph (b), as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minnesota Statutes, section 609.342 or Criminal Sexual Conduct in the Second Degree under Minnesota Statutes, section 609.343, subdivision 1, paragraphs (c), (d), (e), (f), and (h), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

6. Taking Responsibility for Criminal Acts. When an offender is sentenced for taking responsibility for criminal acts under Minnesota Statutes, section 609.495, subdivision 4, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense.

7. Offense Committed in Furtherance of Terrorism. When an offender is sentenced for an offense committed in the furtherance of terrorism under Minnesota Statutes, section 609.714, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by fifty percent.

8. Criminal Sexual Predatory Conduct. When an offender is sentenced for criminal sexual predatory conduct under Minnesota Statutes, section 609.3453, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by:

a. twenty-five percent; or

b. fifty percent, if the violation was committed by an offender with a "previous sex offense conviction" as defined in Minnesota Statutes, section 609.3455, subdivision 1.

9. Solicitation or Promotion of Prostitution; Sex Trafficking. When an offender is sentenced for Solicitation or Promotion of Prostitution or Sex Trafficking under Minnesota Statutes, section 609.322, subdivision 1, paragraph (b), the presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

a. 48 months, if the underlying crime was completed; or

b. 24 months, if the underlying crime was an attempt or conspiracy.

10. Offense Committed for the Benefit of a Gang. When an offender is sentenced for an offense committed for the benefit of a gang under Minnesota Statutes, section 609.229, subdivision 3, paragraph (a):

a. Pursuant to Minnesota Statutes, section 609.229, subdivision 4, the presumptive disposition is always commitment; and

b. The presumptive duration is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

(1) If the offense does not involve a victim or if the victim was eighteen or older:

- (i) 12 months, if the underlying offense was completed; or
- (ii) 6 months, if the underlying offense was an attempt under Minnesota Statutes, section 609.17, or conspiracy under Minnesota Statutes, section 609.175; or
- (2) If the offense involves a victim under the age of eighteen:
  - (i) 24 months, if the underlying offense was completed; or
  - (ii) 12 months, if the underlying offense was an attempt under Minnesota Statutes, section 609.17, or conspiracy under Minnesota Statutes, section 609.175.

11. Attempt or Conspiracy to Commit First-Degree Murder. When an offender is sentenced for attempt or conspiracy to commit murder in the first degree under Minnesota Statutes, section 609.185, or murder of an unborn child in the first degree under Minnesota Statutes, section 609.2661, the presumptive disposition is commitment.

The presumptive durations are as follows:

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

<sup>1</sup> Minnesota Statutes, section 244.09, requires that the Guidelines provide a range for sentences that 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 section 2.C.1-2.

**Comment**

**2.G.01.** *If the presumptive sentence is an odd number, division by two produces 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.*

**2.G.02.** *A modifier that reduces the duration of the presumptive sentence does not alter a presumptive disposition of commitment. For example, the presumptive sentence for completed simple robbery at a Criminal History Score of 3 is commitment for 33 months; the presumptive sentence for attempt is commitment for 16.5 months. Although 16.5 months appears to be in the shaded area on the Standard Grid, the presumptive disposition is still commitment.*

**3. RELATED POLICIES**

**A. Establishing Conditions of Stayed Sentences**

1. Method of Granting Stayed Sentences. When the appropriate cell on the applicable Grid specifies a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must pronounce the length of the stay, which may exceed the duration of the presumptive prison sentence, and may establish appropriate conditions.

a. Stay of Execution. When ordering a stay of execution, the court must pronounce the prison sentence duration, but its execution is stayed. The presumptive duration is shown in the appropriate cell.

b. Stay of Imposition. When ordering a stay of imposition, the court must not pronounce a sentence duration, and the imposition of the sentence is stayed.

The Commission recommends that stays of imposition be used for offenders who are convicted of lower severity offenses and who have 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.** *The use of either a stay of imposition or stay of execution is at the discretion of the court. The Commission has provided a non-presumptive recommendation regarding*

which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and should be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, courts use stays of imposition most frequently for these types of offenders.

**3.A.102.** *When a court grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell on the applicable Grid, and may be as long as the statutory maximum for the conviction offense. See Minnesota Statutes, section 609.135, subdivision 2. 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 court departs from the dispositional recommendation and decides to execute the sentence; or (b) the stay is later revoked and the court decides to imprison the offender.*

**2. Conditions of Stayed Sentences.** While the Commission has chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

- (1) deterrence;
- (2) public condemnation of criminal conduct;
- (3) public safety;
- (4) rehabilitation;
- (5) restitution;
- (6) retribution; and
- (7) risk reduction.

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 Commission urges courts to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. The Commission further urges courts to consider the following principles in establishing the conditions of stayed sentences:

(1) **Retribution.** If retribution is an important objective of the 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. A period of confinement in a local jail or correctional facility may be appropriate.

(2) **Rehabilitation.** If rehabilitation is an important objective of the stayed sentence, the court should make full use of available local programs and resources. 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.

(3) **Restitution.** The Commission urges courts to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for offenders with short criminal histories who are convicted of property crimes, although the use of these conditions in other cases may be appropriate.

(4) **Supervision.** Supervised probation should be a primary condition of stayed sentences.

(5) **Fines.** If fines are imposed, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

**Comment**

**3.A.201.** *The court may attach any conditions to a stayed sentence that are permitted by law and that the court deems appropriate. The Guidelines neither enlarge nor restrict the conditions that courts may attach to a stayed sentence. Minnesota Statutes, section 244.09, subdivision 5, permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop guidelines during its initial guideline development effort. The Commission has provided some language in the above section of the Guidelines that provides general direction in the use of conditions of stayed sentences.*

**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 courts 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 when 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 criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.*

**B. Revocation of Stayed Sentences**

The Commission views a revocation of a stayed sentence and commitment to be justified when:

- (1) the offender is convicted of a new felony for which the Guidelines recommend prison; or
- (2) the offender continues to violate conditions of the stay despite the court's use of expanded and more onerous conditions.

The decision to revoke an offender's stayed sentence should not be undertaken lightly. Great restraint should be exercised in imprisoning offenders who were originally convicted of low severity level offenses or who have short prior criminal histories. For these offenders, the Commission urges continuance of the stay and use of more restrictive and onerous conditions, such as periods of local confinement. Less judicial tolerance is urged for offenders who were convicted of a more severe offense or who had a longer criminal history. For both groups of offenders, however, the court should not reflexively order imprisonment for non-criminal violations of probationary conditions.

**Comment**

**3.B.01.** *The Guidelines are based on the concept that the severity of the sanction is proportional to the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions.*

**C. Jail Credit**

1. In General. In order to promote the goals of the Sentencing Guidelines, it is important to ensure that jail credit is consistently applied. The court must assure that the record accurately reflects all time spent in custody - including examinations under Minn. R. Crim. P. 20 or 27.03, subd 1(B) - for the offense or behavioral incident for which the offender is sentenced. Minnesota Statutes, Rules of Criminal Procedure, relevant court decisions, and these Guidelines determine how jail credit is applied.

2. Applying Jail Credit. To uphold the proportionality of sentencing, jail credit should be applied in the following manner:

- a. The Commissioner of Corrections must deduct jail credit from the sentence imposed by subtracting the time from the specified minimum term of imprisonment. If there is any

remaining time, it must be subtracted from the specified maximum period of supervised release.

b. To avoid double credit when applying jail credit to consecutive sentences, the court must apply the jail credit to the first sentence only.

c. To avoid creating a concurrent sentence when a current offense is sentenced consecutively to a prior offense for which the offender is already serving time in a prison or jail, the court must not apply jail credit from the prior offense to the current offense.

d. When a stayed sentence is revoked and the offender is committed, jail credit must reflect time spent in confinement as a condition of the stayed sentence.

e. Jail credit must 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).

#### **Comment**

**3.C.01.** *Jail credit is governed by statute and rule - see, e.g., Minnesota Statutes, section 609.145, and Minn. R. Crim. P. 27.03, subd 4(b) - and a great deal of case law. 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 an offender 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.*

**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.*

**3.C.03.** *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. 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.*

**3.C.04.** *Credit for time spent in custody as a condition of a stay of imposition or stay of execution is appropriate for time spent in jails, workhouses, and regional correctional facilities. The Commission takes no position on the applicability of jail credit for time spent in other residential facilities, electronic monitoring, etc., and leaves it to the sentencing authority to determine whether jail credit should be granted in these situations.*

**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.*

**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 must 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.*

**3.C.07.** *For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody must be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

#### **D. Juveniles**

The Guidelines apply when determining:

(1) the appropriate sentence for a juvenile certified as an adult under Minnesota Statutes, section 260B.125; or

(2) the stayed adult sentence pronounced as part of the disposition imposed for a juvenile convicted as an extended jurisdiction juvenile under Minnesota Statutes, section 260B.130.

#### **E. Presentence Mental or Physical Examinations for Sex Offenders**

The Commission recommends that, under Minn. R. Crim. P. 27.03, subd 1(B)(1)(b), the court order a physical or mental examination of the offender as a supplement to the presentence investigation required by Minnesota Statutes, section 609.115, when:

(1) an offender has been convicted under Minnesota Statutes, section 609.342 (first-degree criminal sexual conduct), 609.343 (second-degree criminal sexual conduct), 609.344 (third-degree criminal sexual conduct), 609.345 (fourth-degree criminal sexual conduct), or 609.365 (incest); or

(2) an offender is convicted under Minnesota Statutes, section 609.17, of an attempt to commit an act proscribed by Minnesota Statutes, section 609.342 (first-degree criminal sexual conduct) or 609.344 (third-degree criminal sexual conduct.)

#### **F. Military Veterans**

Under Minnesota Statutes, section 609.115, subdivision 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision.

#### **G. Modifications**

1. Policy Modifications. Modifications to the Minnesota Sentencing Guidelines and associated commentary apply to offenders whose date of offense is on or after the specified modification effective date.

2. Clarifications of Existing Policy. Modifications to Commentary relating to existing Guidelines policy apply to offenders sentenced on or after the specified effective date.

#### 4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

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

<sup>1</sup> 12<sup>1</sup>=One year and one day

- Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minnesota Statutes, section 609.185. See section 2.E., for policies regarding those sentences controlled by law.
- Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C. and 2.E.

<sup>2</sup> Minnesota Statutes, section 244.09, requires that the Guidelines provide a range for sentences that 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 section 2.C.1-2

<sup>3</sup> The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

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

*Under Minnesota Statutes, section 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, 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. The court is required to 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 must 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.*

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

#### 4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or More
<i>CSC 1st Degree</i>	<b>A</b>	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> <sup>2</sup>
<i>CSC 2nd Degree-(c)(d)(e)(f)(h) Prostitution; Sex Trafficking 1st Degree-1(a)</i>	<b>B</b>	90 <i>90<sup>2</sup>-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> <sup>2</sup>
<i>CSC 3rd Degree-(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2nd Degree-1a</i>	<b>C</b>	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> <sup>2</sup>
<i>CSC 2nd Degree-(a)(b)(g) CSC 3rd Degree-(a)(e)(f) or (b) with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	<b>D</b>	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree-(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography<sup>2</sup></i>	<b>E</b>	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> <sup>2</sup>
<i>CSC 4th Degree-(a)(b)(e)(f); CSC 5th Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	<b>F</b>	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree-(b) with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct</i>	<b>G</b>	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> <sup>2</sup>
<i>Registration Of Predatory Offenders</i>	<b>H</b>	12 <sup>1</sup> <i>12<sup>1</sup>-14</i>	14 <i>12<sup>1</sup>-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

<sup>1</sup> 12<sup>1</sup>=One year and one day

- Presumptive commitment to state imprisonment. Sex offenses under Minnesota Statutes, section 609.3455, subdivision 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E., for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.
- Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minnesota Statutes, section 609.3455, subdivision 4. See sections 2.C. and 2.E.

<sup>2</sup> Minnesota Statutes, section 244.09, requires that the Guidelines provide a range for sentences that 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 section 2.C.1-2.

<sup>3</sup> Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)

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

*Under Minnesota Statutes, section 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, 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. The court is required to 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 must 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.*

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			

**5.A. 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.

<b>Severity Level</b>	<b>Offense Title</b>	<b>Statute Number</b>
<b>11</b>	Adulteration	609.687, subd. 3(1)
	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings)	609.19, subd. 1
	Murder of an Unborn Child 2nd Degree	609.2662(1)
<b>10</b>	Fleeing a Peace Officer (Death)	609.487, subd. 4(a)
	Murder 2nd Degree (Unintentional Murder)	609.19, subd. 2
	Murder of an Unborn Child 2nd Degree	609.2662(2)
	Murder 3rd Degree	609.195(a)
	Murder of an Unborn Child 3rd Degree	609.2663
<b>9</b>	Assault 1st Degree	609.221
	Assault of an Unborn Child 1st Degree	609.267
	Controlled Substance Crime 1st Degree	152.021
	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)
	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 (Great Bodily Harm)	609.25, subd. 2(2)
	Manslaughter 1st Degree	609.20(1), (2) & (5)
	Manslaughter of an Unborn Child 1st Degree	609.2664(1) & (2)
	Murder 3rd Degree	609.195(b)
	Tampering with Witness, Aggravated 1st Degree	609.498, subd. 1b
<b>8</b>	Aggravated Robbery 1st Degree	609.245, subd. 1
	Arson 1st Degree	609.561
	Burglary 1st Degree (w/Weapon or Assault)	609.582, 1(b) & (c)
	Controlled Substance Crime 2nd Degree	152.022
	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	609.2325, subd. 3(a)(2)
	Criminal Vehicular Homicide (Death)	609.2112, subd. 1
	Criminal Vehicular Operation (Death to an Unborn Child)	609.2114, subd. 1
	Deprivation of Vulnerable Adult (Great Bodily Harm)	609.233, subd. 3(1)
	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, subd. 1e(b)

	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	609.78, subd. 2a
	Escape with Violence from Felony Offense	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 1st Degree	609.20(3) & (4)
	Manslaughter of an Unborn Child 1st Degree	609.2664(3)
	Manslaughter 2nd Degree - Culpable Negligence	609.205(1) & (5)
	Manslaughter of an Unborn Child 2nd Degree	609.2665(1)
	Riot 1st Degree	609.71, subd. 1
	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of \$250,000)	609.5641, subd. 1a(c)
<b>7</b>	Financial Exploitation of a Vulnerable Adult (Over \$35,000)	609.2335
	Felony Driving While Impaired 1st Degree	169A.24
	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of \$100,000)	609.5641, subd. 1a(b)
<b>6</b>	Aggravated Robbery 2nd Degree	609.245, subd. 2
	Assault 2nd Degree	609.222
	Burglary 1st Degree (Occupied Dwelling)	609.582, subd. 1(a)
	Certain Persons Not to Have Firearms or Ammunition	624.713, subd. 1(b); 609.165, subd. 1b
	Controlled Substance Crime 3rd 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)
	Medical Assistance Fraud (Over \$35,000)	609.466
	Price Fixing/Collusive Bidding	325D.53, subd. 1(2)(a)
	Theft Over \$35,000	609.52, subd. 2(a)(3), (4), (15), & (16) with 609.52, subd. 3(1)

5	Arson 2nd Degree	609.562
	Burglary 2nd Degree	609.582, subd. 2(a)(1) & (2), 2(b)
	Check Forgery (Over \$35,000)	609.631, subd. 4(1)
	Criminal Vehicular Operation (Great Bodily Harm)	609.2113, subd. 1
	Criminal Vehicular Operation (Injury to an Unborn Child)	609.2114, subd. 2
	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	609.233, subd. 3(2)
	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	609.78, subd. 2b(2)
	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 2nd Degree - Hunting Accident	609.205(2), (3), & (4)
	Manslaughter of an Unborn Child 2nd Degree	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 (3rd 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
	Wildfire Arson (Demonstrable Bodily Harm)	609.5641, subd. 1a(d)
4	Adulteration	609.687, subd. 3(2)
	Assault 2nd Degree of an Unborn Child	609.2671
	Assault 3rd Degree	609.223, subd. 1, 2, & 3
	Assault 5th Degree (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 2nd Degree (Pharmacy/Tool)	609.582, subd. 2(a)(3) & (4)

Burglary 3rd Degree (Non Residential)	609.582, subd. 3
Controlled Substance Crime 4th 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
Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	609.78, subd. 2b(1)
False Imprisonment (Substantial Bodily Harm)	609.255, subd. 3(c)
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 (Great Bodily Harm)	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)
Threats of Violence (Terror/Evacuation)	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(a)(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
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<b>3</b>	Anhydrous Ammonia (Tamper/Theft/Transport)
	152.136
	Arson 3rd Degree
	609.563
	Bringing Stolen Goods into State (Over \$5,000)
	609.525

Check Forgery (Over \$2,500)	609.631, subd. 4(2)
Coercion (Threat Bodily Harm)	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 Operation (Substantial Bodily Harm)	609.2113, subd. 2
Damage or Theft to Energy Transmission, Telecommunications	609.593
Damage to Property (Risk Bodily Harm)	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 or Ammunition	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, Sexually Dangerous Persons	609.485, subd. 4(a)(5)
Escape from Felony Offense	609.485, subd. 4(a)(1)
False Imprisonment (Demonstrable Bodily Harm)	609.255, subd. 3(b)
False Imprisonment (Restraint)	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 Suppressor (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
Medical Assistance Fraud (Over \$5,000)	609.466
Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
Motor Vehicle Use Without Consent	609.52, subd. 2(a)(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 section 7: 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(a)(8)
	Unauthorized Presence at Camp Ripley	609.396, subd. 2
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2	Accidents (Death)	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, w/Previous Conviction)	609.525
	Cellular Counterfeiting 1st Degree	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 (Service to Public, Over \$1,000, Over \$500 and Subsequent)	609.595, subd. 1(2), (3), & (4)
	Discharge of Firearm (Intentional)	609.66, subd. 1a(a)(2)
	Discharge of Firearm (Public Housing, School, or Park Zone)	609.66, subd. 1a(a)(2) & (3)
	Dishonored Check (Over \$500)	609.535, subd. 2a(a)(1)
	Duty to Render Aid (Death or Great Bodily Harm)	609.662, subd. 2(b)(1)
	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 Suppressor	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
Medical Assistance Fraud (\$5,000 or Less)	609.466
Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4 609.576, subd. 1(3)(iii)
Negligent Fires (Damage \$2,500 or More)	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 2nd Degree	609.71, subd. 2
Rustling and Livestock Theft (\$2,500 or Less)	609.551
Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
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
Threats of Violence (Bomb Threat)	609.713, subd. 2
Theft Crimes (\$5,000 or Less)	<i>See section 7: 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. 1a(a)
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<b>1</b> Accidents (Great Bodily Harm)	169.09, subd. 14(a)(2)
Altering Livestock Certificate	35.824
Assault 4th Degree	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 2nd Degree	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, Mental Illness	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 Bill of Lading	228.45; 228.47; 228.49; 228.50; 228.51
False Certification by Notary Public	609.65(1)
False Declaration	256.984
False Information - Certificate of Title Application	168A.30, subd. 1
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
Fraudulent Instrument or Entry for Procuring a Certificate of Title	508.80
Fraudulent Statements	609.645
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)
Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	152.33, subd. 2
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
Threats of Violence (Replica Firearm)	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	Chapters 201, 203B, & 204C
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<b>UN-RANKED</b>	
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, subd. 1(a)
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	624.7191
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
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.13; 82A.25
Service Animal Providing Service	343.21, subd. 9(f) (h)
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) (g) (i)
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 Wire Communications Violations	609.4975 626A.02, subd. 4; 626A.03, subd. 1(b)(iii); 626A.26, subd. 2(1)(ii)
<b>A</b>	Criminal Sexual Conduct 1st Degree	609.342
<b>B</b>	Criminal Sexual Conduct 2nd Degree  Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.343, subd. 1(c) (d) (e) (f) (h)  609.322, subd. 1(a)
<b>C</b>	Criminal Sexual Conduct 3rd Degree  Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.344, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o)  609.322, subd. 1a
<b>D</b>	Criminal Sexual Conduct 2nd Degree  Criminal Sexual Conduct 3rd Degree  Dissemination of Child Pornography (Subsequent or by Predatory Offender)	609.343, subd. 1(a) (b) (g) 609.344, subd. 1(a) (e) (f) or subd. 1(b) with ref. to subd. 2(1)  617.247, subd. 3
<b>E</b>	Criminal Sexual Conduct 4th Degree  Use Minors in Sexual Performance  Dissemination of Child Pornography	609.345, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o) 617.246, subds. 2, 3, 4  617.247, subd. 3
<b>F</b>	Criminal Sexual Conduct 4th Degree  Criminal Sexual Conduct 5th Degree Possession of Child Pornography (Subsequent or by Predatory Offender)	609.345, subd. 1(a) (b) (e) (f) 609.3451, subd. 3  617.247, subd. 4
<b>G</b>	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant) Solicitation of Children to Engage in Sexual Conduct Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.344, subd. 1(b) with ref. to subd. 2(2)  617.352, subd. 2  609.352, subd. 2a

	Indecent Exposure	617.23, subd. 3
	Possession of Child Pornography	617.247, subd. 4
<b>H</b>	Failure to Register as a Predatory Offender	243.166, subd. 5(b) (c)

### 5.B. Severity Level By Statutory Citation

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.

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.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 1st Degree	9
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine	9
152.022	Controlled Substance Crime 2nd Degree	8
152.023	Controlled Substance Crime 3rd Degree	6 <sup>1</sup>
152.024	Controlled Substance Crime 4th Degree	4
152.025	Controlled Substance Crime 5th Degree	2
152.0261	Importing Controlled Substances Across State Borders	9
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	5
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	2
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
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	1
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	1

152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	2
168A.30, subd. 1	False Information - Certificate of Title Application	1
169.09, subd. 14(a)(1)	Accidents (Death)	2
169.09, subd. 14(a)(2)	Accidents (Great Bodily Harm)	1
169A.24	Felony Driving While Impaired 1st Degree	7 <sup>1</sup>
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 without "Duplicate" on it	Unranked
228.45; 228.47; 228.49; 228.50; 228.51	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

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299F.82, subd. 1	Transfer of Explosives	5
299F.83	Negligent Discharge of Explosive	5
299J	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)(g)(i)	Torture or Cruelty to Pet or Companion Animal	Unranked
343.21, subd. 9(f)(h)	Service Animal Providing Service	Unranked
343.31, subd. 1(a)	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
508.80	Fraudulent Instrument or Entry for Procuring a Certificate of Title	1
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 or Ammunition	6
609.19, subd. 1	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By-Shootings)	11
609.19, subd. 2	Murder 2nd Degree (Unintentional Murder)	10
609.195(a)	Murder 3rd Degree	10
609.195(b)	Murder 3rd Degree	9
609.20(1), (2) & (5)	Manslaughter 1st Degree	9
609.20(3) & (4)	Manslaughter 1st Degree	8
609.205(1) & (5)	Manslaughter 2nd Degree - Culpable Negligence	8
609.205(2), (3) & (4)	Manslaughter 2nd Degree - Hunting Accident	5
609.2112, subd. 1	Criminal Vehicular Homicide (Death)	8
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)	5
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)	3

609.2114, subd. 1	Criminal Vehicular Operation (Death to an Unborn Child)	8
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)	5
609.215	Aiding Suicide	Unranked
609.221	Assault 1st Degree (Great Bodily Harm)	9
609.222	Assault 2nd Degree (Dangerous Weapon)	6
609.223, subd. 1	Assault 3rd Degree (Substantial Bodily Harm)	4 <sup>2</sup>
609.223, subd. 2	Assault 3rd Degree (Bodily Harm, Pattern of Child Abuse)	4
609.223, subd. 3	Assault 3rd Degree (Bodily Harm, Victim under 4)	4
609.2231, subd. 1	Assault 4th Degree (Peace Officer)	1
609.2231, subd. 2	Assault 4th Degree (Firefighters and Emergency Medical Personnel)	1
609.2231, subd. 3	Assault 4th Degree (Corrections Employee, Prosecutor, Judge, Probation Officer)	1 <sup>2</sup>
609.2231, subd. 3a	Assault 4th Degree (Secure Treatment Facility Personnel)	1 <sup>2</sup>
609.2231, subd. 4(b)	Assaults Motivated by Bias	1 <sup>15</sup>
609.224, subd. 4	Assault 5th Degree (3rd or Subsequent Violation)	4
609.2241	Knowing Transfer of Communicable Disease	see note <sup>3</sup>
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 Caused by Distribution of Drugs	8
609.229, subd. 3(a)	Crime Committed for Benefit of Gang	see note <sup>4</sup>
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
609.233, subd. 3(1)	Deprivation of Vulnerable Adult (Great Bodily Harm)	8
609.233, subd. 3(2)	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	5
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 1st Degree	8
609.245, subd. 2	Aggravated Robbery 2nd Degree	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(b)	False Imprisonment (Demonstrable Bodily Harm)	3
609.255, subd. 3(c)	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 of an Unborn Child 2nd Degree	11
609.2662(2)	Murder of an Unborn Child 2nd Degree	10
609.2663	Murder of an Unborn Child 3rd Degree	10
609.2664(1) & (2)	Manslaughter of an Unborn Child 1st Degree	9
609.2664(3)	Manslaughter of an Unborn Child 1st Degree	8
609.2665(1)	Manslaughter of an Unborn Child 2nd Degree	8
609.2665(2), (3), & (4)	Manslaughter of an Unborn Child 2nd Degree	5
609.267	Assault of an Unborn Child 1st Degree	9
609.2671	Assault of an Unborn Child 2nd Degree	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)(4)(5)	Coercion (Property Value Over \$2,500)	3
609.27, subd. 1(2)(3)(4)(5)	Coercion (Property Value \$301 - \$2,500)	2
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 1st Degree	B <sup>15</sup>
609.322, subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	see note <sup>5</sup>
609.322, subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd 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 1st Degree	A
609.343, subd. 1(a)(b)(g)	Criminal Sexual Conduct 2nd Degree	D
609.343, subd. 1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2nd Degree	B
609.344, subd. 1(a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D
609.344, subd. 1(e)(f) or subd. 1(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344, subd. 1(b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	G

609.344, subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 3rd Degree	C
609.345, subd. 1(a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345, subd. 1(b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
609.345, subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 4th Degree	E
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree	F
609.3453	Criminal Sexual Predatory Conduct	see note <sup>6</sup>
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G <sup>15</sup>
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G <sup>15</sup>
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 \$35,000)	6
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 from Felony Offense	3 <sup>7</sup>
609.485, subd. 4(a)(2)	Escape, Mental Illness	1 <sup>15</sup>

609.485, subd. 4(a)(3)	Escape with Violence from Gross Misdemeanor or Misdemeanor Offense	Unranked
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1 <sup>15</sup>
609.485, subd. 4(a)(5)	Escape from Civil Commitment, Sexually Dangerous Persons	3
609.485, subd. 4(b)	Escape with Violence from Felony Offense	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 (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 <sup>8</sup>
609.494, subd. 2(b)	Solicitation of Juveniles	see note <sup>8</sup>
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 <sup>9</sup>
609.496; 609.497	Concealing Criminal Proceeds; Engaging in Business	Unranked
609.4971	Warning Subject of Investigation	Unranked
609.4975	Warning Subject of Surveillance or Search	Unranked
609.498, subd. 1a	Tampering with a Witness 1st Degree	5
609.498, subd. 1b	Tampering with a Witness Aggravated 1st Degree	9
609.50, subd. 2	Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew	3
609.504	Disarming a Peace Officer	3
609.52, all sections <sup>10</sup>	Theft of Public Funds (Over \$5,000)	3
609.52, all sections <sup>10</sup>	Theft of Public Funds (\$5,000 or Less)	2
609.52, all sections <sup>10</sup>	Theft from Person	4
609.52, all sections <sup>10</sup>	Theft of Public Records	3
609.52, all sections <sup>10</sup>	Theft (Looting)	2
609.52, subd. 2(a)(1)	Theft (Over \$5,000)	3
609.52, subd. 2(a)(1)	Theft (\$5,000 or Less)	2
609.52, subd. 2(a)(1)	Theft of a Motor Vehicle	4 <sup>11</sup>
609.52, subd. 2(a)(2)	Taking Pledged Property (Over \$5,000)	3
609.52, subd. 2(a)(2)	Taking Pledged Property (\$5,000 or Less)	2
609.52, subd. 2(a)(3) with subd. 3(1)	Theft by Check/False Representation (Over \$35,000)	6
609.52, subd. 2(a)(3)(i)	Theft by Check (\$5,001 - \$35,000)	3
609.52, subd. 2(a)(3)(i)	Theft by Check (\$5,000 or Less)	2
609.52, subd. 2(a)(3)(ii-v)	Theft by False Representation (\$5,001 - \$35,000)	3
609.52, subd. 2(a)(3)(ii-v)	Theft by False Representation (\$5,000 or Less)	2
609.52, subd. 2(a)(4) with subd. 3(1)	Theft by Trick (Over \$35,000)	6
609.52, subd. 2(a)(4)	Theft by Trick (\$5,001 - \$35,000)	3
609.52, subd. 2(a)(4)	Theft by Trick (\$5,000 or Less)	2
609.52, subd. 2(a)(5)	Temporary Theft (Over \$5,000)	3

609.52, subd. 2(a)(5)	Temporary Theft (\$5,000 or Less)	2
609.52, subd. 2(a)(6)	Refusing to Return Lost Property (Over \$5,000)	3
609.52, subd. 2(a)(6)	Refusing to Return Lost Property (\$5,000 or Less)	2
609.52, subd. 2(a)(7)	Theft from Coin Operated Machine (Over \$5,000)	3
609.52, subd. 2(a)(7)	Theft from Coin Operated Machine (\$5,000 or Less)	2
609.52, subd. 2(a)(8)	Theft of Trade Secret	3
609.52, subd. 2(a)(9)	Theft of Leased Property (Over \$5,000)	3
609.52, subd. 2(a)(9)	Theft of Leased Property (\$5,000 or Less)	2
609.52, subd. 2(a)(10) & (11)	Altering Serial Number (Over \$5,000)	3
609.52, subd. 2(a)(10) & (11)	Altering Serial Number (\$5,000 or Less)	2
609.52, subd. 2(a)(12)	Theft of Cable TV Services (Over \$5,000)	3
609.52, subd. 2(a)(12)	Theft of Cable TV Services (\$5,000 or Less)	2
609.52, subd. 2(a)(13)	Theft of Services (Over \$5,000)	3
609.52, subd. 2(a)(13)	Theft of Services (\$5,000 or Less)	2
609.52, subd. 2(a)(14)	Theft of Telecommunication Services (Over \$5,000)	3
609.52, subd. 2(a)(14)	Theft of Telecommunication Services (\$5,000 or Less)	2
609.52, subd. 2(a)(15)(16) with subd. 3(1)	Diversion of Corporate Property (Over \$35,000)	6
609.52, subd. 2(a)(15)(16)	Diversion of Corporate Property (\$5,001 - \$35,000)	3
609.52, subd. 2(a)(15)(16)	Diversion of Corporate Property (\$5,000 or Less)	2
609.52, subd. 2(a)(17) <sup>10</sup>	Motor Vehicle Use Without Consent	3 <sup>11</sup>
609.52, subd. 2(a)(18)	Theft of Motor Fuel from Retailer (Over \$5,000)	3
609.52, subd. 2(a)(18)	Theft of Motor Fuel from Retailer (\$5,000 or Less)	2
609.52, subd. 3a(1)	Theft (\$1,000 or Less; Risk of Bodily Harm)	2
609.52, subd. 3a(2)	Theft (Over \$1,000; Risk of Bodily Harm)	see note <sup>12</sup>
609.52, subd. 3a(2)	Theft (\$501-\$1,000, and Prior Conviction; Risk of Bodily Harm)	see note <sup>12</sup>
609.52, subd. 3(1)	Theft of Firearm	4
609.52, subd. 3(2)	Theft of Incendiary Device	4
609.52, subd. 3(2)	Theft of Controlled Substances	4
609.52, subd. 3(3)(b)	Theft of Controlled Substances	3
609.52, subd. 3(3)(d)(iii)	Theft from an Abandoned or Vacant Building (\$1,000 or Less)	1
609.521	Possession of Shoplifting Gear	3
609.525, all sections	Bringing Stolen Goods into State (Over \$5,000)	3
609.525, all sections	Bringing Stolen Goods into State (\$1,001 - \$5,000)	2
609.525, all sections	Bringing Stolen Goods into State (\$501 - \$1,000, w/Previous Conviction)	2
609.526	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (2nd or Subsequent Violations)	4
609.526, subd. 2(1)	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000 or More)	3
609.526, subd. 2(2)	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (Less than \$1,000)	2

609.527, subd. 3(3)	Identity Theft	2
609.527, subd. 3(4)	Identity Theft	3
609.527, subd. 3(5)	Identity Theft	8
609.527, subd. 5a	Electronic Use of False Pretense to Obtain Identity	2
609.527, subd. 5b	Unlawful Possession or Use of Scanning Device or Reencoder	2
609.528, subd. 3(3)	Possession or Sale of Stolen or Counterfeit Check	2
609.528, subd. 3(4)	Possession or Sale of Stolen or Counterfeit Check	3
609.529	Mail Theft	2
609.53	Receiving Stolen Goods (Over \$5,000)	3
609.53	Receiving Stolen Goods (\$5,000 or Less)	2
609.53	Receiving Stolen Property (Firearm)	4
609.535, subd. 2a(a)(1)	Dishonored Check (Over \$500)	2
609.54, all sections	Embezzlement of Public Funds (Over \$2,500)	3
609.54, all sections	Embezzlement of Public Funds (\$2,500 or Less)	2
609.551, all sections	Rustling of Livestock (Over \$2,500)	3
609.551, all sections	Rustling of Livestock (\$2,500 or Less)	2
609.561, all sections	Arson 1st Degree	8
609.562	Arson 2nd Degree	5
609.563, all sections	Arson 3rd Degree	3
609.5641, subd. 1a(a)	Wildfire Arson	2
609.5641, subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of \$100,000)	7
609.5641, subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of \$250,000)	8
609.5641, subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)	5
609.576, subd. 1(1)	Negligent Fires (Great Bodily Harm)	4
609.576, subd. 1(3)(iii)	Negligent Fires (Damage \$2,500 or More)	2
609.576, subd. 2	Dangerous Smoking	3
609.582, subd. 1(a)	Burglary 1st Degree (Occupied Dwelling)	6 <sup>13</sup>
609.582, subd. 1(b) (c)	Burglary 1st Degree (w/Weapon or Assault)	8
609.582, subd. 2(a)(1) (2)	Burglary 2nd Degree (Dwelling/Bank)	5
609.582, subd. 2(a)(3) (4)	Burglary 2nd Degree (Pharmacy/Tool)	4
609.582, subd. 2(b)	Burglary 2nd Degree (Government Building, Religious Est., Historic Property, or School Building)	5
609.582, subd. 3	Burglary 3rd Degree (Nonresidential)	4
609.586, subd. 2	Possession of Code Grabbing Devices	3
609.59	Possession of Burglary Tools	3
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)	3
609.593	Damage or Theft (Energy Transmission or Telecommunications)	3
609.594	Damage to Property (Critical Service Facilities, Utilities, and Pipelines)	Unranked
609.595, subd. 1(1)	Damage to Property (Risk Bodily Harm)	3

609.595, subd. 1(2) (3) (4)	Damage to Property (Service to Public, Over \$1,000, Over \$500 and Subsequent)	2
609.595, subd. 1a(a)	Damage to Property (Motivated by Bias)	1 <sup>15</sup>
609.596, subd. 1	Killing or Harming a Public Safety Dog	Unranked
609.597, subd. 3(3)	Assaulting or Harming a Police Horse	1 <sup>15</sup>
609.597, subd. 3(1) & (2)	Assaulting or Harming a Police Horse	Unranked
609.611, all sections	Defrauding Insurer (Over \$5,000)	3
609.611, all sections	Defrauding Insurer (\$5,000 or Less)	2
609.612	Insurance Fraud (Employment of Runners)	Unranked
609.615, all sections	Defeating Security on Realty (Over \$5,000)	3
609.615, all sections	Defeating Security on Realty (\$5,000 or Less)	2
609.62, all sections	Defeating Security on Personalty (Over \$5,000)	3
609.62, all sections	Defeating Security on Personalty (\$5,000 or Less)	2
609.625, all sections	Aggravated Forgery (Non-Check)	2
609.63, all sections	Forgery	1
609.631, subd. 4(1)	Check Forgery (Over \$35,000)	5
609.631, subd. 4(2)	Check Forgery (Over \$2,500)	3
609.631, subd. 4(3)(a)	Check Forgery (\$251 - \$2,500)	2
609.631, subd. 4(3)(b)	Check Forgery (\$250 or Less)	1
609.632	Counterfeiting Currency	Unranked
609.635	Obtaining Signature by False Pretense	2
609.64	Recording, Filing of Forged Instrument	2
609.645	Fraudulent Statements	1
609.65(1)	False Certification by Notary Public	1
609.651, subd. 1 with 4(a)	State Lottery Fraud	1
609.651, subd. 1 with 4(b) and subd. 2 & 3	State Lottery Fraud	Unranked
609.652	Fraudulent Drivers' Licenses and Identification Cards	1
609.66, subd. 1a(a)(1)	Firearm Suppressor	2
609.66, subd. 1a(a)(1)	Firearm Suppressor (Public Housing, School or Park Zone)	3
609.66, subd. 1a(a)(2) & (3)	Discharge of Firearm (Public Housing, School or Park Zone)	2
609.66, subd. 1a(a)(2)	Discharge of Firearm (Intentional)	2
609.66, subd. 1a(a)(3)	Discharge of Firearm (Reckless)	1
609.66, subd. 1b	Furnishing Firearm to a Minor	2
609.66, subd. 1c	Furnishing a Dangerous Weapon	2
609.66, subd. 1d(a)	Dangerous Weapons on School Property	4
609.66, subd. 1e(a)	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3
609.66, subd. 1e(b)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8
609.66, subd. 1g	Weapon in Courthouse/Certain State Buildings	4
609.662, subd. 2(b)(1)	Duty to Render Aid (Death or Great Bodily Harm)	2
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1 <sup>15</sup>
609.667	Remove or Alter Serial Number on Firearm	1

609.668, subd. 6	Explosive Devices/Incendiary Devices	6
609.67, subd. 2	Possession/Ownership of Machine and Shortbarreled Shotguns	3
609.671	Hazardous Wastes	Unranked
609.686, subd. 2	Tampering w/Fire Alarm System (Results in Bodily Harm)	3
609.686, subd. 2	Tampering w/Fire Alarm System (Potential for Bodily Harm)	1
609.687, subd. 3(1)	Adulteration Resulting in Death	11
609.687, subd. 3(2)	Adulteration Resulting in Bodily Harm	4
609.687, subd. 3(3)	Adulteration	Unranked
609.71, subd. 1	Riot 1st Degree	8
609.71, subd. 2	Riot 2nd Degree	2
609.712	Real/Simulated Weapons of Mass Destruction	Unranked
609.713, subd. 1	Threats of Violence (Terror/Evacuation)	4
609.713, subd. 2	Threats of Violence (Bomb Threat)	2
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1 <sup>15</sup>
609.714	Offense in Furtherance of Terrorism	see note <sup>14</sup>
609.746, subd. 1(e)	Interference with Privacy (Subsequent Violations or Minor Victim)	1
609.7475	Fraudulent or Improper Financing Statements	Unranked
609.748, subd. 6(d)	Violation of Harassment Restraining Order	4
609.749, subd. 3(a) (b)	Stalking (Aggravated Violations)	4
609.749, subd. 4(a)	Stalking (2nd or Subsequent Violations)	4
609.749, subd. 4(b)	Stalking (3rd or Subsequent Violations)	5
609.749, subd. 5	Stalking (Pattern of Conduct)	5
609.76, subd. 2	Sports Bookmaking	4
609.76, subd. 3, 4, 5, 6, & 7	Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction)	Unranked
609.763	Lawful Gambling Fraud	Unranked
609.776	Interference with Emergency Communications	5 <sup>15</sup>
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	8
609.78, subd. 2b(1)	Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	4
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	5
609.80, subd. 2	Cable Communication Systems Interference	1
609.816	Wrongful Employment at a Child Care Center (Over \$5,000)	3
609.816	Wrongful Employment at a Child Care Center (\$5,000 or Less)	2
609.82, all sections	Fraud in Obtaining Credit (Over \$5,000)	3
609.82, all sections	Fraud in Obtaining Credit (\$5,000 or Less)	2

609.821, subd. 2(1) (2) (5) (6) (7) (8)	Financial Transaction Card Fraud (Over \$2,500)	3
609.821, subd. 2(1) (2) (5) (6) (7) (8)	Financial Transaction Card Fraud (\$2,500 or Less)	2
609.821, subd. 2(3) (4)	Financial Transaction Card Fraud	1
609.821, subd. 3(1)(i)	Financial Transaction Card Fraud (Over \$35,000)	5
609.822	Residential Mortgage Fraud	2
609.825, subd. 2	Bribery of Participant or Official in Contest	2
609.83	Falsely Impersonating Another	Unranked
609.85(1)	Dangerous Trespass, Railroad Tracks	3
609.851, subd. 2	False Traffic Signal	3
609.855, subd 2(c)(1)	Interference with Transit Operator	1
609.855, subd. 5	Discharge Firearm at Occupied Transit Vehicle/Facility	6
609.855, subd. 5	Discharge Firearm at Unoccupied Transit Vehicle/Facility	1
609.856	Police Radios During Commission of Crime	Unranked
609.86	Commercial Bribery	4
609.88	Computer Damage (Over \$2,500)	3
609.88	Computer Damage (\$2,500 or Less)	2
609.89	Computer Theft (Over \$2,500)	3
609.89	Computer Theft (\$2,500 or Less)	2
609.891	Unauthorized Computer Access	Unranked
609.8912	Computer Encryption	Unranked
609.893, subd. 1	Telecommunications and Information Services; Obtaining Services by Fraud (Over \$2,500)	3
609.893, subd. 1	Telecommunications and Information Services; Obtaining Services by Fraud (\$2,500 or Less)	2
609.893, subd. 2	Telecommunications and Information Services; Facilitation of Telecommunications Fraud	2
609.894, subd. 3	Cellular Counterfeiting 2nd Degree	1
609.894, subd. 4	Cellular Counterfeiting 1st Degree	2
609.895, subd. 3(a)	Counterfeited Intellectual Property	2
609.895, subd. 3(b)	Counterfeited Intellectual Property	1
609.896	Criminal Use of Real Property (Movie Pirating)	1
609.904	Racketeering (RICO)	Unranked
617.20	Abortion	Unranked
617.22	Abortion	Unranked
617.23, subd. 3	Indecent Exposure	G
617.241, subd. 4	Obscene Materials - Distribution	Unranked
617.246	Use of Minors in Sexual Performance Prohibited	E
617.247, subd. 3	Dissemination of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	D
617.247, subd. 3	Dissemination of Pictorial Representation of Minors	E <sup>15</sup>
617.247, subd. 4	Possession of Pictorial Representation of Minors (Subsequent or by Predatory Offenders)	F
617.247, subd. 4	Possession of Pictorial Representation of Minors	G

624.713, subd. 2(a)	Certain Persons Not to Have Firearms or Ammunition	3
624.713, subd. 2(b)	Certain Persons Not to Have Firearms or Ammunition	6
624.7132, subd. 15(b)	Transfer Pistol to Minor	2
624.714, subd. 1a	Pistol Without Permit (Subsequent Violations)	1
624.7141, subd. 2	Transfer Pistol to Ineligible Person	2
624.7181, subd. 2	Assault Weapon in Public (Under 21)	1
624.7191	Metal Penetrating Bullets	Unranked
624.731, subd. 8(a)	Tear Gas and Tear Gas Compounds; Electronic Incapacitation Devices	3
624.732, subd. 2	Intentional Release of Harmful Substance	3
626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)	Wire Communications Violations	Unranked
626.556, subd. 6	Failure to Report	Unranked
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order	4
641.165, subd. 2(b)	Bring Dangerous Weapon into County Jail	4

<sup>1</sup> See section 2.C. and Appendix 1, to determine the presumptive disposition.

<sup>2</sup> See section 2.C. and Appendix 1, to determine the presumptive disposition for assault committed by a State prison inmate or for assault on secure treatment facility personnel by persons committed to the Minnesota Sex Offender Program.

<sup>3</sup> See section 2.A.5., to determine the presumptive sentence.

<sup>4</sup> See section 2.G.10., to determine the presumptive sentence.

<sup>5</sup> See section 2.G., to determine the presumptive sentence.

<sup>6</sup> See section 2.G.8., to determine the presumptive sentence.

<sup>7</sup> See section 2.C. and Appendix 1, to determine the presumptive disposition for an escape from an executed sentence.

<sup>8</sup> See section 2.G.3., to determine the presumptive sentence.

<sup>9</sup> See section 2.G.6., to determine the presumptive sentence.

<sup>10</sup> Includes offenses sentenced according to Minnesota Statutes, section 609.52, subdivision 3(3)(d).

<sup>11</sup> See *Comment 2.A.05.*, for commentary on motor vehicle offense severity levels.

<sup>12</sup> See section 2.A.2.a-b., to determine the severity level.

<sup>13</sup> See section 2.C.3.b and Appendix 1, to determine the presumptive disposition.

<sup>14</sup> See section 2.G.7., to determine the presumptive sentence.

<sup>15</sup> See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

### 6. Offenses Eligible for Permissive Consecutive Sentences

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

B. Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

<b>Statute Number</b>	<b>Offense Title</b>
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 (Death)
169.09, subd. 14(a)(2)	Accidents (Great Bodily Harm)
169A.24	DWI 1st Degree
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 1st Degree
609.19	Murder 2nd Degree
609.195	Murder 3rd Degree
609.20	Manslaughter 1st Degree
609.205	Manslaughter 2nd Degree
609.2112, subd. 1	Criminal Vehicular Homicide (Death)
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)

609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)
609.2114, subd. 1	Criminal Vehicular Operation (Death to an Unborn Child)
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)
609.215	Aiding Suicide
609.221	Assault 1st Degree
609.222	Assault 2nd Degree - Dangerous Weapon
609.223	Assault 3rd Degree
609.2231	Assault 4th Degree
609.224, subd. 4	Assault 5th Degree (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 Caused by 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)
609.233, subd. 3	Deprivation of Vulnerable Adult
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245, subd. 1	Aggravated Robbery 1st Degree
609.245, subd. 2	Aggravated Robbery 2nd Degree
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder of Unborn Child 1st Degree

609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.2664	Manslaughter of an Unborn Child 1st Degree
609.2665	Manslaughter of an Unborn Child 2nd Degree
609.267	Assault of an Unborn Child 1st Degree
609.2671	Assault of an Unborn Child 2nd Degree
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 1st Degree
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd 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 1st Degree
609.343, subd. 1	Criminal Sexual Conduct 2nd Degree
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree
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. 3 Fleeing Peace Officer
- 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 1st Degree
- 609.498, subd. 1b Tampering with a Witness, Aggravated 1st Degree
- 609.527 Identity Theft
- 609.561 Arson in the 1st Degree
- 609.5641, subd. 1a(b) Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of \$100,000)
- 609.5641, subd. 1a(c) Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of \$250,000)
- 609.5641, subd. 1a(d) Wildfire Arson (Demonstrable Bodily Harm)
- 609.582, subd. 1(a) Burglary 1st Degree - of Occupied Dwelling
- 609.582, subd. 1(b) Burglary 1st Degree with Dangerous Weapon
- 609.582, subd. 1(c) Burglary 1st Degree with Assault
- 609.582, subd. 2(a)(1) Burglary 2nd Degree - Dwelling
- 609.582, subd. 2(a)(2) Burglary 2nd 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 1st Degree
609.712	Real/Simulated Weapons of Mass Destruction
609.713, subd. 1	Threats of Violence (Terror/Evacuation)
609.713, subd. 2	Threats of Violence (Bomb Threat)
609.713, subd. 3(a)	Threats of Violence (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)
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)
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 Performance
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
624.7191	Metal Penetrating Bullets
624.732, subd. 2	Intentional Release of Harmful Substance
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order

### 7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes (\$5,000 or less and over \$5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

Severity Level 2. When the monetary value of the Theft Crime is \$5,000 or less, the penalty statute is Minnesota Statutes, section 609.52, subdivision 3(3)(a).

Severity Level 3. When the monetary value of the Theft Crime is over \$5,000, the penalty statute is Minnesota Statutes, section 609.52, subdivision 3(2).

<b>Statute Number</b>	<b>Offense Title</b>
176.178	Workers' Compensation Fraud
256.98	Wrongfully Obtaining Assistance
268.182	False Representations
393.07, subd. 10	Federal Food Stamp Program
471.392	False Declaration of Claim
514.02, subd. 1(b)	Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft)
609.445	Failure to Pay Over State Funds
609.455	Permitting False Claims Against Government
609.465	Presenting False Claims to Public Officer or Body
609.52	Theft of Public Funds
609.52, subd. 2(a)(1)	Theft
609.52, subd. 2(a)(2)	Taking Pledged Property
609.52, subd. 2(a)(3)(i)	Theft By Check
609.52, subd. 2(a)(3)(ii), (iii), (iv), & (v)	Theft By False Representation
609.52, subd. 2(a)(4)	Theft By Trick
609.52, subd. 2(a)(5)	Temporary Theft
609.52, subd. 2(a)(6)	Refusing to Return Lost Property
609.52, subd. 2(a)(7)	Theft from Coin Operated Machines
609.52, subd. 2(a)(9)	Theft of Leased Property
609.52, subd. 2(a)(10) & (11)	Altering Serial Number
609.52, subd. 2(a)(12)	Theft of Cable TV Services
609.52, subd. 2(a)(13)	Theft of Services
609.52, subd. 2(a)(14)	Theft of Telecommunications Services
609.52, subd. 2(a)(15) & (16)	Diversion of Corporate Property
609.53	Receiving Stolen Property

609.611	Defrauding Insurer
609.615	Defeating Security on Realty
609.62	Defeating Security on Personalty
609.816	Wrongful Employment at a Child Care Center
609.82	Fraud in Obtaining Credit

**8. Targeted Misdemeanor List**  
(as provided for in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e))

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

<b>Statute Number</b>	<b>Offense Title</b>
169A.20	Driving While Impaired
518B.01; 629.75	Order for Protection Violation
609.224	Assault 5th Degree
609.2242	Domestic Assault
609.746	Interference with Privacy
609.748	Harassment or Restraining Order Violation
617.23	Indecent Exposure

**Appendix 1. Mandatory and Presumptive Sentences Reference Table**

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

Presumptive disposition. Commitment.

Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable 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 duration in the appropriate cell on the applicable Grid, whichever is longer. (See *section 2.G* for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

<b>Statute</b>	<b>Offense</b>	<b>Prerequisite Or Conditions</b>	<b>Minimum Duration</b>
169A.24, subd. 1(2)	Driving while Intoxicated	Prior felony DWI	Grid time
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minnesota Statutes, sections 609.2112.1(2) thru (6); 609.2113.1(2) thru (6); 609.2113.2(2) thru (6)	Grid time

152.021	Controlled Substance Crime 1st Degree	Prior felony conviction per chapter; Minnesota Statutes, chapter 152, or finding under Minnesota Statutes, section 152.18	48 months
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction per chapter; Minnesota Statutes, chapter 152, or finding under Minnesota Statutes, section 152.18	36 months
152.023, subd. 3(a)	Controlled Substance Crime 3rd Degree	Prior felony conviction under Minnesota Statutes, chapter 152, or finding under Minnesota Statutes, section 152.18	Grid time*
152.023, subd. 3(b)	Controlled Substance Crime 3rd Degree	Prior felony conviction under Minnesota Statutes, chapter 152, or finding under 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, 609.222, 609.223, 609.2231, or 609.224	Assault 1st through 5th Degree	Committed by State prison inmate while confined (609.2232)	Grid time, Consecutive
609.2231, subd. 3a(b)	Assault 4th Degree	Committed by person committed to the Minnesota Sex Offender Program	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)	Burglary 1st Degree	Prior felony burglary	Grid time*

\* Presumptive commitment per Guidelines section 2.C.

### Appendix 2. Dangerous Weapons Offense Reference Table

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

Presumptive disposition. Commitment.

Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable 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 duration in the appropriate cell of the applicable Grid, whichever is longer. (See *section 2.G* for more information on convictions for attempts, conspiracies and offenses with the other sentence modifiers.)

#### Dangerous Weapons - Minnesota Statutes, Section 609.11

Statute	Offense	Prerequisite Or Conditions	Minimum Duration
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
609.11, subd. 5(b)	Certain Persons not to have Firearms or Ammunition	Current conviction under Minnesota Statutes, section 609.165, or Minnesota Statutes, section 624.713, subd. 1(2)	60 months
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

**Appendix 3. Presumptive Sentence Durations that Exceed the  
Statutory Maximum Sentence Reference Table**

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

<b>Statute</b>	<b>Offense</b>	<b>Severity Level</b>	<b>Statutory Maximum (Months)</b>	<b>Exceeds Statutory Maximum At:</b>
609.2231, subd. 4(b)	Assault 4th Degree Motivated by Bias	1	12, and 1 Day	CHS 3
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS 4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS 4
609.485, subd. 4(a)(2)	Escape, Mental Illness	1	12, and 1 Day	CHS 3
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1	12, and 1 Day	CHS 3
609.595, subd. 1a(a)	Damage to Prop Motivated by Bias	1	12, and 1 Day	CHS 3
609.597, subd. 3(3)	Assaulting or Harming Police Horse	1	12, and 1 Day	CHS 3
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1	12, and 1 Day	CHS 3
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1	12, and 1 Day	CHS 3
609.776	Interference with Emergency Comm.	5	36 months	CHS 4
617.247, subd. 3	Dissemination of Pictorial Representation of Minors	E	84 months	CHS 5

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## Targeted misdemeanor list, Sent 8

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## **Minnesota Rules of Civil Procedure**

Revised Effective January 1, 1989  
With amendments effective July 1, 2015

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Introductory Statement

**TEXT OF RULES****Rule 3. Commencement of the Action; Service of the Complaint; Filing of the Action****3.01 Commencement of the Action**

A civil action is commenced against each defendant:

- (a) when the summons is served upon that defendant, or
- (b) at the date of acknowledgement of service if service is made by mail or other means consented to by the defendant either in writing or electronically, or
- (c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

(Amended effective July 1, 2013; amended effective July 1, 2015.)

*[For text of 3.02, see M.S. 2014, Volume 15]*

***Advisory Committee Comments - 2015 Amendments***

*This rule is amended to add the explicit provision for consent to service by any means in subdivision (b), not only service by mail. If the party to be served consents to service, the service is effective and constitutionally sound regardless of method. Thus, a party may consent to service by ordinary electronic mail even though the rules do not otherwise provide for it.*

**Rule 4. Service**

*[For text of 4.01 to 4.03, see M.S. 2014, Volume 15]*

**4.04 Service by Publications; Personal Service Out of State**

**(a) Service by Publications.** Service by publication shall be sufficient to confer jurisdiction:

- (1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent;
- (2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(A) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(B) The defendant is a nonresident individual or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

(3) When the action is for marriage dissolution or separate maintenance and the court has ordered service by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that the affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

**(b) Personal Service Outside State.** Personal service of such summons outside the state, proved by the affidavit of the person making the same, shall have the same effect as the published notice provided for herein.

**(c) Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice;

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(Amended effective January 1, 1997; amended effective July 1, 2015.)

***Advisory Committee Comment - 1996 Amendment***

*Rule 4.04 is amended to conform the rule to its federal counterpart, in part. The new provision adopts verbatim the provisions for service of process outside the United States*

*contained in the federal rules. This modification is appropriate because this subject is handled well by the federal rule and because it is advantageous to have the two rules similar. This is particularly valuable given the dearth of state-court authority on foreign service of process. Existing portions of the rule are renumbered for clarity.*

#### **Advisory Committee Comments - 2015 Amendments**

*Rule 4.04 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically, by rule, that notarization is necessary. The difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization, and notarization often places a significant burden on self-represented litigants. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits." Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.*

*[For text of 4.041 to 4.07, see M.S. 2014, Volume 15]*

#### **Rule 5. Service and Filing of Pleadings and Other Papers**

*[For text of 5.01, see M.S. 2014, Volume 15]*

##### **5.02 Service; How Made**

(a) **Methods of Service.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. If Rule 14 of the General Rules of Practice for the District Courts or an order of the Minnesota Supreme Court authorizes or requires that service be made by electronic means, service shall be made by compliance with subdivision (b) of this rule. Otherwise, service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; by mailing a copy to the attorney or party at the attorney's or party's last known address; or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(b) **E-Service.** Service of all documents after the original complaint may, and where required by these rules shall, be made by electronic means as authorized by Rule 14 of the General Rules of Practice for the District Courts.

(c) **Effective Date of Service.** Service by mail is complete upon mailing. Service by facsimile is complete upon completion of the facsimile transmission. Service by authorized electronic means using the court's E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

(d) **Technical Errors; Relief.** Upon satisfactory proof that electronic filing or electronic service of a document was not completed, any party may obtain relief in accordance with Rule 14.01(c) of the General Rules of Practice for the District Courts.

(Amended effective January 1, 1997; amended effective October 22, 2010; amended effective September 1, 2012; amended effective July 1, 2015.)

***Advisory Committee Comment - 2010 Amendment***

*Rule 5.02 is amended to provide for service by electronic means, other than by facsimile as allowed by the existing rule, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in one or two districts, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide. The rule makes service by electronic means effective when transmission is complete, just as the existing rules provide for filing and service by mail and facsimile transmission.*

*Service by electronic means is allowed for documents served after the original summons. Service under Rule 4 is required for summonses, and electronic service is not one of the means of service under that rule.*

*This amendment is modeled on Rules 5(b)(2)(D) and (3) of the Federal Rules of Civil Procedure, as amended to implement electronic filing and service in the federal courts.*

***Advisory Committee Comments - 2015 Amendments***

*Rule 5.02 is amended in several ways to implement the use of e-filing and e-service in civil actions. Rule 5.02(a) adopts the more detailed provisions of Rule 14 of the Minnesota General Rules of Practice, which establishes procedures for e-filing and e-service in all trial courts. See Minn. Gen. R. Prac. 1.01. The deleted reference to filing by facsimile from Rule 5.02(a) is not intended to affect the availability of facsimile service or filing. Facsimile transmission is defined as a means of electronic transmission allowed under Minn. Gen. R. Prac. 14.02(a)(7).*

*The use of the alternative "may or shall" language in Rule 5.02(a) reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service will be required for some actions (based on district, county, or type of action), permitted for others, or not permitted at all. The applicability of e-filing and e-service to particular actions should be established in separate implementation orders.*

*[For text of 5.03, see M.S. 2014, Volume 15]*

**5.04 Filing; Certificate of Service**

**(a) Deadline for Filing Action.** Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by Rules 301 to 378 of the General Rules of Practice for the District Courts.

**(b) Filing of Documents after the Complaint; Certificate of Service.** All documents after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless authorized by court order or rule.

**(c) Rejection of Filing.** The administrator shall not refuse to accept for filing any documents presented for that purpose solely because it is not presented in proper form as required by any court rule or practice. Documents may be rejected for filing if:

- (1) tendered without a required filing fee or a correct assigned file number;
- (2) tendered to an administrator other than for the court where the action is pending; or

(3) the document constitutes a discovery request or response submitted without the express permission of the court.

(Amended effective March 1, 1994; amended effective January 1, 1997; amended effective March 1, 2001; amended effective September 1, 2012; amended effective July 1, 2013; amended effective July 1, 2015.)

***Advisory Committee Comment - 1993 Amendment***

*The amendment to Rule 5.04 makes it unnecessary to file notice of taking depositions in the vast majority of cases. Filing may be required as a condition precedent to issuance of a deposition subpoena pursuant to Minn. R. Civ. P. 45.04(a), though that rule only requires proof of service to be shown, not filed, and does not require filing of the notice itself in either event. The notice need not be filed because court administrators should issue subpoenas without the filing of the notice. In practice, courts have little use for deposition notices in court files, and in those rare circumstances where reference to them is necessary, they can be attached as exhibits to an affidavit, filed by leave of court, or offered in evidence just as any other discovery request or response.*

***Advisory Committee Comment - 2000 Amendment***

*The last sentence of Rule 5.04 is changed to broaden the direction to court administrators not to reject documents for filing for noncompliance with the form requirements of the rules. The rule as amended makes it clear that those form requirements, regardless of which set of rules contains them, should not be the basis for a refusal to file the document. Any deficiency as to form should be dealt with by appropriate court order, including in most cases an opportunity to cure the defect.*

***Advisory Committee Comments - 2015 Amendments***

*Rule 5.04 clarifies the limited circumstances where documents tendered to the court administrator for filing can be rejected. These provisions largely reflect current practices in the courts. Concern about public access to sensitive information is greater in the context of electronic filing because of the risk that the information could be found and spread over the Internet shortly after filing. See, e.g., Minn. Gen. R. Prac. 11 for requirements for submitting restricted identifiers (e.g., Social Security numbers, etc.) and procedures to address any failure to comply with the requirements. It is not feasible to accept for filing documents that relate to an action pending in another district or to file them in an action under an invalid file number. The acceptance of these documents would only create confusion for the parties, both in the intended district and action and in the district and action where they are mistakenly sent. Similarly, payment of the required filing fee is required by statute, see Minnesota Statutes, section 357.021, and there is no provision for filing without payment of that required fee. The filing of discovery requests and responses, other than notices of taking depositions, is already prohibited by the second paragraph of this rule; the amended language makes it clear that the court administrators are authorized to reject these unauthorized filings. The rule does not prevent a party from filing an affidavit that incorporates or attaches copies of discovery requests or responses that are authenticated by the affiant.*

*The rule intentionally omits any recommendation that the absence of a Civil Cover Sheet would result in the rejection of a document for filing. The court can impose an appropriate sanction for this failure after appropriate notice to the parties and, if the court determines it is appropriate, an opportunity to cure the defect. The improper submission of restricted identifiers is addressed in Rule 11.02(3) of these rules and in Rule 11.04 in the General Rules of Practice.*

*[For text of 5.05, see M.S. 2014, Volume 15]*

**5.06 Filing Electronically**

Where authorized or required by order of the Minnesota Supreme Court or Rule 14 of the General Rules of Practice for the District Courts, documents may, or where required

shall, be filed electronically by following the procedures of such order or rule and will be deemed filed in accordance with the provisions of this rule.

A document that is electronically filed is deemed to have been filed by the court administrator on the date and time of its transmittal to the court through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Courts, and except for proposed orders, the filing shall be stamped with this date and time if it is subsequently accepted by the court administrator. If the filing is not subsequently accepted by the court administrator for reasons authorized by Rule 5.04, no date stamp shall be applied and the E-Filing System shall notify the filer that the filing was not accepted.

(Added effective October 22, 2010; amended effective September 1, 2012; amended effective July 1, 2015.)

***Advisory Committee Comment - 2010 Amendment***

*Rule 5.06 is a new rule to provide for filing by electronic means, if authorized by an order of the Minnesota Supreme Court. This amendment is intended to facilitate a pilot project on electronic service and filing in one or two districts, but is designed to be a model for the implementation of electronic filing if the pilot project is made permanent and statewide. The rule makes filing by electronic means effective in accordance with the rule for the pilot project.*

***Advisory Committee Comment - 2012 Amendment***

*Rule 5.02 is amended to authorize service by use of an authorized E-Filing and E-Service System where allowed or required by court rule or supreme court order. This amendment takes effect in conjunction with the adoption of Rule 14 of the General Rules of Practice; that rule defines the cases in which electronic filing and service are either required or permitted, as well as what constitutes proof of service. Rule 5.02(c) addresses the fact of service. Just as service by postal mail is complete upon dropping the properly addressed and postage paid document into the mailbox, service using the court's E-Filing System is complete upon transmitting the electronic document to the E-Filing System using the appropriate service command. Rule 5.02(d) provides specific guidance for courts dealing with the rare, but probably inevitable, circumstance of the E-Filing System either not being available or not functioning as intended. If applicable, the rule authorizes the court to deem pleadings served or filed (or both) when attempted and to adjust the time to respond as appropriate.*

*Rule 5.04 is amended to specify the limited situations where courts are not required to accept documents tendered for filing. These situations apply equally to documents tendered for filing electronically, by mail, or by hand-delivery to the court. Rejection for filing is not required in each of these situations, and it may be possible that certain format defects might be "fixed" at the time of filing. For example, if an incorrect file number is used on a document and it is detected at the time of attempted filing, it might be corrected; the administrator is still authorized to reject it for filing. An attempt to file a case using a new case number when the case has previously been filed may also be treated as not having the correct file number.*

*Rule 5.05 is amended to dovetail the facsimile filing and service provisions to mandatory use of e-filing and e-service in certain cases. Where the court rules require e-filing and e-service, filing and service by facsimile are not authorized. When e-filing and e-service are in use throughout the state and in all categories of cases, facsimile filing and service is likely to become unavailable.*

*Rule 5.06 is amended to clarify when electronic filing through the court's E-Filing System is effective. E-filings are subject to acceptance by the court administrator and acceptance may or may not occur on the same day as the transmittal of the filing. If accepted by the court administrator, however, the e-filing party will get the benefit of the date and time of their transmittal as the effective date of their filing.*

***Advisory Committee Comments - 2015 Amendments***

*This rule incorporates the provisions of Minn. Gen. R. Prac. 14 on the operation of electronic filing and the determination of the date of filing where it is accomplished by use of the court's E-Filing System.*

*The use of the alternative "may or shall" language in the first paragraph reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service may be required for some actions (based on district, county, or type of actions), permitted for others, or not permitted at all. The rules are designed to implement e-filing and e-service in particular actions as established by separate implementation orders.*

**Rule 5A. Notice of Constitutional Challenge to a Statute**

A party that files a pleading, written motion, or other document drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the document that raises it, if:

(A) a federal statute is questioned and neither the United States nor any of its agencies, officers, or employees is a party in an official capacity; or

(B) a state statute is questioned and neither the state nor any of its agencies, officers, or employees is a party in an official capacity; and

(2) serve the notice and document on the Attorney General of the United States if a federal statute is challenged, or on the Minnesota Attorney General if a state statute is challenged, by U.S. mail to afford the Attorney General an opportunity to intervene.

(Added effective July 1, 2007; amended effective July 1, 2015.)

***Advisory Committee Comment - 2007 Amendment***

*Rule 5A is a new rule, though it addresses subject matter covered by Minn. R. Civ. P. 24.04 prior to the adoption of this rule. The rule imposes an express requirement for notice to the appropriate Attorney General - the Minnesota Attorney General for challenges to Minnesota Statutes and the Attorney General of the United States for challenges to federal statutes. The rule requires the giving of notice, and the purpose of the notice is to permit the Attorney General receiving it to decide whether to intervene in the action. The rule does not require any action by the Attorney General and in many instances intervention will not be sought until the litigation reaches the appellate courts. The federal rule requires service on the appropriate attorney general by certified or registered mail. The committee believes that service of this notice by U.S. mail is sufficient for this purpose.*

*As part of this change, Minn. R. Civ. P. 24.04 is abrogated as it duplicates this rule's mechanism.*

**Rule 6. Time**

*[For text of 6.01 to 6.04, see M.S. 2014, Volume 15]*

**6.05 Additional Time After Service by Mail or Service Late in Day**

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party, and the notice or document is served upon the party by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective January 1, 1997; amended effective July 1, 2007; amended effective September 1, 2012; amended effective July 1, 2015.)

**Advisory Committee Comment - 1996 Amendment**

*The amendment to Rule 6.01 conforms the rule to its federal counterpart. The committee believes it is desirable to define explicitly what constitutes a "legal holiday." Given the nature of Minnesota's weather, the committee believes specific provision for dealing with inclement weather should be made in the rules. The federal rule enumerates specific holidays. That drafting approach is not feasible in Minnesota because Minnesota Statutes, section 645.44, subdivision 5, defines legal holidays, but allows the judiciary to pick either Columbus Day or the Friday after Thanksgiving as a holiday. Whichever is selected is defined to be a holiday under the rule.*

*The amendment to Rule 6.05 conforms the rule to the federal rule except for the last sentence which is new and has no federal counterpart. This provision is intended to discourage the unseemly practices of sliding a "service" under the door of opposing counsel or sending a facsimile transmission after the close of business and asserting timely service. Such service will be timely under the rules, but will add a day to the time to respond. If the paper is due to be served a fixed number of days before an event, that number should be increased by one as well, making it necessary to serve late in the day before the deadline.*

**Advisory Committee Comment - 2007 Amendment**

*Rule 6.01 is amended to remove potential ambiguity in the existing rule. The rule is ambiguous because of the odd definition of "holiday" in Minnesota Statutes, section 645.44, subdivision 5, and its ambiguity over how Columbus Day is treated. Additionally, because the rules explicitly provide for service by mail, the court recognized that a "mail holiday" should be a "legal holiday" for the purpose of this rule.*

*The rule excuses filing on the last day of a time period if the court administrator's office is inaccessible. The amended rule replaces an indefinite concept of the court administrator's office being "inaccessible" with a more definite formulation: the office of the administrator of the court where the action is pending must actually be closed.*

*Rule 6.05 is amended to make the rule definite as to what forms of service qualify as "service by mail." The rule as amended explicitly allows three additional days only for service by U.S. mail; the use of any other delivery or courier service does not constitute "U.S. mail," and therefore does not qualify for additional time. This rule is now consistent with Minn. R. Civ. P. 4.05, which specifies "first-class mail" as the means for service by mail.*

**Advisory Committee Comment - 2012 Amendment**

*Rule 6.01 is amended to add unavailability of the court-authorized e-filing and e-service system as a circumstance that would result in the extension of the time period. This extension applies only where the system problem occurs on the last day of the period and should only apply where the problem is not momentary. The rule requires that unavailability of the E-Filing System actually prevent compliance with the service or filing requirements. This certainly eliminates use of a short-lived shutdown from extending the deadline except, possibly, where it occurs right at the end of the day. Where the shutdown occurs for a substantial part of the day and where it continues through the close of business, then the additional day would be automatically applied.*

**Advisory Committee Comments - 2015 Amendments**

*Rule 6.05 is amended to remove a potential ambiguity in the existing rule--the 5:00 p.m. deadline for service to be accomplished without allowing an additional day for response is defined to be Minnesota time. This provision will be especially important for service using the court's E-Filing System, by which service could be effected from anywhere in the world.*

**Rule 7. Pleadings Allowed; Form of Motions**

*[For text of 7.01, see M.S. 2014, Volume 15]*

## 7.02 Motions and Other Documents

(a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.

(b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other documents provided for by these rules.

(c) All motions will be signed in accordance with Rule 11.

(Amended effective July 1, 2015.)

## Rule 10. Form of Pleadings

*[For text of 10.01 to 10.03, see M.S. 2014, Volume 15]*

### 10.04 Failure to Comply

If a pleading, motion or other document fails to indicate the case type as required by Rule 10.01, it may be stricken by the court unless the appropriate case type indicator is communicated to the court administrator promptly after the omission is called to the attention of the pleader or movant.

(Amended effective July 1, 2015.)

## Rule 11. Signing of Pleadings, Motions, and Other Documents; Representations to Court; Sanctions

### 11.01 Signature

Every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is self-represented, shall be signed by the party. Each document shall state the signer's address and telephone number and e-mail address, if any, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If authorized by order of the Minnesota Supreme Court or by rule of court, a document filed, signed, or verified by electronic means in accordance with that order constitutes a signed document for the purpose of applying these rules.

The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of applicable court rules.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000; amended effective October 22, 2010; amended effective September 1, 2012; amended effective July 1, 2015.)

### *Advisory Committee Comment - 2010 Amendment*

*Rule 11.01 is amended to add the last sentence. This amendment makes it clear that "signing" in accordance with a rule allowing for filing and service by electronic means where authorized by an order of the Minnesota Supreme Court is treated as a signature for the purpose of Rule 11 or other provision in the rules. This amendment is intended to facilitate a pilot project on electronic filing in one or two districts, but is designed to be a model for the implementation of electronic filing and service if the pilot project is made permanent and statewide.*

***Advisory Committee Comment - 2012 Amendment***

*Rule 11.01 is amended to add the second paragraph. The sole purpose of the amendment is to make explicit the status of "signatures" affixed to pleadings and other documents that are electronically served. Whatever means is used to sign these documents, whether quill pen and ink, facsimile of a signature, or an indication that the document is signed (such as a "/s/ Pat Smith" notation), each will be treated the same way and deemed to be signatures for all purposes under the rule.*

**11.02 Representations to Court**

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or self-represented litigant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and

(e) the pleading, motion, or other document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Rule 11 of the General Rules of Practice for the District Courts. Notwithstanding Rule 11.03(a)(1) of these rules, a party shall not be required to wait 21 days before filing or presenting a motion seeking relief from the court in regard to the proper submission of documents containing restricted identifiers.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000; amended effective July 1, 2015.)

**11.03 Sanctions**

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 of these rules has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation. This rule does not limit the imposition of sanctions authorized by other rules, statutes, or the inherent power of the court.

**(a) How Initiated.**

(1) **By Motion.** A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) **On Court's Initiative.** On its own initiative, the court may enter an order describing the specific conduct that appears to violate Rule 11.02 and directing an attorney, law firm, or party to show cause why it has not violated Rule 11.02 with respect thereto.

**(b) Nature of Sanction; Limitations.** A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in Rule 11.03(a)(1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of Rule 11.02(b).

(2) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

**(c) Order.** When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(Amended effective January 1, 1992; amended effective July 1, 2000; amended effective August 1, 2000; amended effective July 1, 2015.)

***Advisory Committee Comments - 2015 Amendments***

*The only substantive amendment to Rule 11 is found in Rule 11.02, which adds an additional certification made upon the signing of a pleading. Under this provision, signing a pleading is deemed to be a certification that the pleading does not contain any restricted identifiers in violation of Rule 11 of the General Rules of Practice. Rule 11.03 is amended in 2015 to recognize that relief is available under other rules including Gen. R. Prac. 11.04 regarding improper submission of restricted identifiers.*

*The remaining amendments to Rule 11 are not substantive in nature or intended effect. The replacement of "paper" with "document" is made through these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.*

*"Self-represented litigant" is used uniformly throughout the judicial branch, and is preferable to "non-represented party" and "pro se party," both to avoid a Latin phrase not used outside legal jargon and because it facilitates the drafting of clearer rules.*

*[For text of 11.04, see M.S. 2014, Volume 15]*

**Rule 16. Pretrial Conferences; Scheduling; Management**

**16.01 Pretrial Conferences; Objectives**

In any action, the court may in its discretion direct the attorneys for the parties and any self-represented litigants to appear before it for a conference or conferences before trial for such purposes as:

- (a) expediting the disposition of the action;
- (b) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (c) discouraging wasteful pretrial activities;
- (d) improving the quality of the trial through more thorough preparation; and
- (e) facilitating the settlement of the case.

(Amended effective July 1, 2015.)

*[For text of 16.02 and 16.03, see M.S. 2014, Volume 15]*

**16.04 Final Pretrial Conference**

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for

trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any self-represented litigants.

(Amended effective July 1, 2015.)

*[For text of 16.05 and 16.06, see M.S. 2014, Volume 15]*

**Rule 26. Duty to Disclose; General Provisions Governing Discovery**

*[For text of 26.01 to 26.05, see M.S. 2014, Volume 15]*

**26.06 Discovery Conference**

**(a) Conference Timing.** Except in a proceeding exempted from initial disclosure under Rule 26.01(a)(2) or when the court orders otherwise, the parties must confer as soon as practicable - and in any event within 30 days from the initial due date for an answer.

**(b) Conference Content; Parties' Responsibilities.** In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26.01(a), (b); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all self-represented litigants that have appeared in the case are jointly responsible for arranging the conference, and for attempting in good faith to agree on the proposed discovery plan. A written report outlining the discovery plan must be filed with the court within 14 days after the conference or at the time the action is filed, whichever is later. The court may order the parties or attorneys to attend the conference in person.

**(c) Discovery Plan.** A discovery plan must state the parties' views and proposals on:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26.01, including a statement of when initial disclosures were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(3) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) any issues about claims of privilege or of protection as trial-preparation materials, including - if the parties agree on a procedure to assert these claims after production - whether to ask the court to include their agreement in an order;

(5) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(6) any other orders that the court should issue under Rule 26.03 or under Rule 16.02 and 16.03.

**(d) Conference with the Court.** At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) Any issues relating to claims of privilege or of protection as trial-preparation material, including - if the parties agree on a procedure to assert such claims after production - whether to ask the court to include their agreement in an order;

- (5) Any limitations proposed to be placed on discovery;
- (6) Any other proposed orders with respect to discovery; and

(7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matter set forth in the motion. All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan.

Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after the service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pre-trial conference authorized by Rule 16.

(Amended effective July 1, 2007; amended effective July 1, 2013; amended effective July 1, 2015.)

#### ***Advisory Committee Comment - 2007 Amendment***

*Rule 26.06 is amended to add to the required provisions in a motion for a discovery conference. These changes require the party seeking a discovery conference to address electronic discovery issues, but do not dictate any particular resolution or conference agenda for them. Many cases will not involve electronic discovery issues, and there is no need to give substantial attention to them in a request for a conference under this rule.*

#### **26.07 Signing of Discovery Requests, Responses and Objections**

In addition to the requirements of Rule 33.01(d), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and e-mail address shall be stated. A self-represented litigant shall sign the request, response, or objection and state the party's address and e-mail address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the signer's knowledge, information and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

(Amended effective July 1, 2015.)

#### ***Advisory Committee Comment - 2000 Amendment***

*The changes made to Rule 26 include some of the recent amendments to the federal rule made in 1993. The changes made to the Minnesota rule have been modified to reflect*

*the fact that Minnesota practice does not include the automatic disclosure mechanisms that have been adopted in some federal courts; the resulting differences in the rules are minor, and the authorities construing the federal rule should be given full weight to the extent applicable.*

*The changes in Rule 26.02(a) adopt similar amendments made to Fed. R. Civ. P. 26(b) in 1993. The new rule is intended to facilitate greater judicial control over the extent of discovery. The rule does not limit or curtail any form of discovery or establish numeric limits on its use, but does clarify the broad discretion courts have to limit discovery.*

*Rule 26.02(e) is a new rule adopted directly from its federal counterpart. The requirement of a privilege log is necessary to permit consideration, by opposing counsel and ultimately by the courts, of the validity of privilege claims. Privilege logs have been in use for years and are routinely required when a dispute arises. See generally Nevada Power Co. v. Monsanto Co., 151 F.R.D. 118, 122 & n.6 (D. Nev. 1993) (enumerating deficiencies in log); Allendale Mutual Ins. Co. v. Bull Data Sys., Inc., 145 F.R.D. 84 (N.D. Ill. 1992) (ordering privilege log and specifying requirements); Grossman v. Schwarz, 125 F.R.D. 376, 386-87 (S.D.N.Y. 1989) (holding failure to provide privilege log deemed "presumptive evidence" claim of privilege not meritorious). The requirement of the log should not, however, be an invitation to require detailed identification of every privileged document within an obviously privileged category. Courts should not require a log in all circumstances, especially where a request seeks broad categories of non-discoverable information. See, e.g., Durkin v. Shields (In re Imperial Corp. of Am.), 174 F.R.D. 475 (S.D. Cal. 1997) (recognizing document-by-document log would be unduly burdensome). It is the intention of the rule, however, to require the production of logs routinely to encourage the earlier resolution of privilege disputes and to discourage baseless assertions of privilege.*

*Fed. R. Civ. P. 45(d)(2) expressly requires production of a privilege log by a non-party seeking to assert a privilege in response to a subpoena. Although the Committee does not recommend adoption of the extensive changes that have been made in federal Rule 45, this recommendation is made to minimize disruption in existing Minnesota subpoena practice. The difference in rules should not prevent a court from ordering production of a privilege log by a non-party in appropriate cases. The cost of producing a privilege log may be properly shifted to the party serving the subpoena under Rule 45.06.*

*Rule 26.05 is amended to adopt in Minnesota the same supplementation requirement as exists in federal court. It is a more stringent and more explicit standard, and reflects a sounder analysis of when supplementation is necessary. It states affirmatively the duty to disclose. The Committee believes it is particularly desirable to have state supplementation practice conform to federal practice in order that compliance with the requirements is more common and sanctions can more readily be imposed for failure to supplement. The rule relaxes the supplementation requirement to obviate supplementation where the information has been disclosed either in discovery (i.e., in other discovery responses or by deposition testimony) or in writing. The writing need not be a discovery response, and could be a letter to all counsel identifying a witness or correcting a prior response.*

## **Rule 32. Use of Depositions in Court Proceedings**

*[For text of 32.01 to 32.04, see M.S. 2014, Volume 15]*

### **32.05 Use of Video Depositions**

Video depositions may be used in court proceedings to the same extent as stenographically recorded depositions.

(Amended effective July 1, 2015.)

## **Rule 33. Interrogatories to Parties**

### **33.01 Availability**

(a) Any party may serve written interrogatories upon any other party. Interrogatories may, without leave of court, be served upon any party after service of the summons and

complaint. No party may serve more than a total of 50 interrogatories upon any other party unless permitted to do so by the court upon motion, notice and a showing of good cause. In computing the total number of interrogatories each subdivision of separate questions shall be counted as an interrogatory.

(b) The party upon whom the interrogatories have been served shall serve separate written answers or objections to each interrogatory within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of summons and complaint upon that defendant. The court, on motion and notice and for good cause shown, may enlarge or shorten the time.

(c) Objections shall state with particularity the grounds for the objection and may be served either as a part of the document containing the answers or separately. The party submitting the interrogatories may move for an order under Rule 37.01 with respect to any objection to or other failure to answer an interrogatory. Answers to interrogatories to which objection has been made shall be deferred until the objections are determined.

(d) Answers to interrogatories shall be stated fully in writing and shall be signed under oath or penalty of perjury by the party served or, if the party served is the state, a corporation, a partnership, or an association, by any officer or managing agent, who shall furnish such information as is available. A party shall restate the interrogatory being answered immediately preceding the answer to that interrogatory.

All answers signed under penalty of perjury must have the signature affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 50 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26.02(a).

(Amended effective January 1, 1997; amended effective July 1, 2015.)

#### ***Advisory Committee Comment - 1996 Amendment***

*This change retains the existing rule on interrogatories, and does not adopt the 1993 amendment to its federal counterpart. The federal courts adopted in 1993 an express numerical limitation on the number of interrogatories, limiting them to 25. Minnesota took this action to limit discovery in the 1975 amendments to the rules, limiting interrogatories to 50, and this limit has worked well in practice. The committee believes that the other changes in the federal rules are not significant enough in substance to warrant adoption in Minnesota.*

*The rule, however, is amended in one important way. The existing provision requiring a party receiving objections to interrogatories to move within 15 days to have the objections determined by the court and the waiver of a right to answers if such a motion is not made within the required time has not worked well. There is no reason to require such prompt action, and much to commend more orderly consideration of the objections. The absolute waiver of the old rule gives way to an explicit right to have the matter resolved by the court, and permits that to be done at any time. This permits the party receiving objections to determine their validity, attempt to resolve any dispute, consider the eventual importance of the information, and possibly to take the matter up with the court in conjunction with other matters. All of these reasons favor a more flexible rule.*

**Advisory Committee Comments - 2015 Amendments**

*Rule 33.01 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) (codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, interrogatory answers may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.*

*[For text of 33.02 and 33.03, see M.S. 2014, Volume 15]*

**Rule 45. Subpoena**

*[For text of 45.01 to 45.05, see M.S. 2014, Volume 15]*

**45.06 Interstate Depositions and Discovery**

**(a) Definitions.** In Rule 45.06:

- (1) "Foreign jurisdiction" means a state other than this state.
- (2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
  - (A) attend and give testimony at a deposition;
  - (B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
  - (C) permit inspection of premises under the control of the person.

**(b) Issuance of Subpoena.**

- (1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct.
- (2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.
- (3) A subpoena under subsection (2) must:
  - (A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

**(c) Service of Subpoena.** A subpoena issued by a district court administrator under Section (b) must be served in compliance with Rule 45.02 of these rules.

**(d) Deposition, Production, and Inspection.** All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Paragraph (b).

**(e) Application To Court.** An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Paragraph (b) must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

(Added effective July 1, 2015.)

***Advisory Committee Comment - 2006 Amendment***

*Rule 45 is replaced, virtually in its entirety, by its federal counterpart. Provisions of the federal rule that do not apply in state court practice are deleted or replaced by comparable provisions consistent with current Minnesota practice. The new rule recognizes the scope of the subpoena power in the existing rule and does not significantly change it. Portions of the federal rule not relevant to state practice have been deleted. The rule adopts the language of the federal rules referring to the court where an action is pending. Because Minnesota allows actions to be commenced by service, the action is "pending" before the court named in the caption after service even though it is not on file with the court. See Minn. R. Civ. P. 3.01. The rule is not intended to change the existing practice that permitted subpoenas to be issued even though an action had not been filed.*

*The most significant "new" provisions of the rule are the authorization of issuance of subpoenas by attorneys as officers of the court (Rule 45.01(c)) and the adoption of a mechanism for requiring production of documents without requiring a deposition to be conducted (Rule 45.01(a)(3)). The rule retains the provisions of former Rule 45.06, which provide for expenses of non-parties put to particular expense of complying with a subpoena. Those provisions are now bifurcated, with portions relating to notice of the right to costs in Rule 45.01, dealing with the form of subpoenas, and the provision requiring payment in Rule 45.03(d). Additionally, Rule 45.03(a) places an affirmative duty on the attorney issuing or serving a subpoena to avoid imposing undue burden or expense on the person receiving it.*

***Advisory Committee Comment - 2007 Amendment***

*Rule 45.01 is amended to add a process, in Rule 45.01(d), for issuance of a subpoena to compel attendance in Minnesota at a deposition in an action pending in another jurisdiction. The procedure in this section essentially follows that contained in former Rule 45.04(a), which was abrogated in 2005.*

*Rule 45.01(e) is a new rule intended to clarify the existing rule because of continuing confusion over the need to provide notice to all parties before issuance of a subpoena for pretrial discovery. Existing Rule 45.02(a) explicitly requires notice, but that provision has been overlooked in a number of instances reported to the advisory committee. Accordingly, Rule 45.01(e) is included to make the requirement of notice more prominent and to make it clearly apply to every use of a subpoena prior to trial. The rule does not specify the form of notice required, but it would normally be accomplished by providing either a copy of the subpoena at the time it is served on the non-party or by unambiguous notice in some other way that a non-party is being subpoenaed.*

*Rule 45.02(d) is amended to establish an explicit deadline for making arrangements for compensation by a party receiving a subpoena that requires only the production of documents without a deposition. By adding the words "commanded production or" to the first*

*sentence, the rule applies explicitly to this situation, and establishes the same deadline as for a deposition.*

*Rule 45 is also amended to include provisions for use of subpoenas to obtain discovery of electronically stored information. These amendments relate to the discovery of electronically stored information, and generally just incorporate into Rule 45 for subpoena practice the procedures of Rules 26, 30, 33, 34, and 37 for discovery from parties.*

#### **Advisory Committee Comment - 2010 Amendment**

*Rule 45 is amended in several ways to prevent misuse of subpoenas. These amendments are consistent with the purpose of two provisions of the existing rule. Under Rule 45.01(e), notice of issuance of a subpoena is required in order that all parties have an opportunity to participate in the production and to curtail use of a subpoena for ex parte investigation. Rule 45.03(a) explicitly recognizes that the costs of discovery from non-parties should be borne, to the extent feasible, by the parties to the action and the burden on subpoenaed parties should be minimized. The amendment in 2010 adds language to Rule 45.02(a) that is intended to make even more explicit the proper notice for use of a subpoena for production of documents, etc.*

*Rule 45.04(a) is amended by the addition of paragraph (5) that is intended to reinforce that the proper use of a subpoena for production is to obtain information for use by all parties to the litigation, and not for ex parte use by a single party. Once a subpoena is issued to a non-party, information produced or testimony by that non-party must be made available to all parties. The new language also facilitates the orderly production of information. Rule 45 was amended in 2006 to permit use of subpoenas to require production of documents and other information from non-parties without requiring a deposition to be scheduled and, indeed, without even requiring a personal appearance. See Rule 45.03(b). Where the non-party and the party that issued a subpoena make alternative arrangements for production in response to the subpoena - which may be entirely proper - the potential exists that the production would occur without the knowledge of the other parties to the action. That production, without notice to the parties, is improper and essentially prevents participation by the parties who had received notice of another time of production. The amended rule places a duty on the party issuing the subpoena either to arrange production at a time agreeable to all parties and the non-party or to give notice to the other parties.*

*The amended rule is intended to create a streamlined process that minimizes the burdens of discovery on non-parties and reinforces the rights of all parties to participate in court-sanctioned discovery on an equal footing. There may still be circumstances where other parties will want to serve separate subpoenas to the same non-party, either to request additional documents or inspection or copying, or to obtain documents in a different format. Ideally, the parties will coordinate their efforts to minimize the costs and other burdens of production on the person receiving a subpoena.*

*Notice of the intention to comply with a subpoena in some manner other than that noticed in the subpoena is important because one of the parties may have valid objections to the production taking place at all. Under the revised rule, no production can properly occur without all parties having at least seven days notice, providing any party the opportunity either to participate in the production or to seek a protective order to prevent the production from taking place. Because of the expedited hearing requirement for commitment proceedings under Minnesota Statutes, chapter 253B, subpoenas for production in those proceedings are subject to a 24-hour notice requirement as provided in a new Rule 25 added to the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act.*

#### **Advisory Committee Comments - 2015 Amendments**

*Rule 45.06 is a new rule, recommended to adopt the Uniform Interstate Deposition and Discovery Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007.*

*This rule allows issuance of a subpoena in Minnesota based upon the proper issuance and service of a subpoena under the authority of another state. If a Minnesota subpoena is issued, the procedures of Rule 45 apply to the service and enforcement of that subpoena and other procedures relating to it. Notice must be provided to all other parties to the action, and the form of subpoena must conform to Minnesota law. Minnesota citizens and residents are entitled to the full protection of Minnesota's rules even where the subpoena is initiated for use in foreign proceedings.*

*Although adopted as a rule, rather than a statute, recognizing the Minnesota Supreme Court's inherent and exclusive authority over matters of court procedure, the rule retains the operative provisions of the Uniform Act. Like uniform laws, this rule should be interpreted to accomplish uniformity among the states and should be construed to promote that purpose. See Minnesota Statutes, section 645.22. Construction of the uniform law by other states may accordingly be relevant to its interpretation in Minnesota. See generally Layne-Minn. Co. v. Regents of the Univ. of Minn., 266 Minn. 284, 123 N.W.2d 371 (1963).*

### **Rule 53. Masters**

*[For text of 53.01, see M.S. 2014, Volume 15]*

#### **53.02 Order Appointing Master**

**(a) Notice.** The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

**(b) Contents.** The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(1) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53.03;

(2) the circumstances - if any - in which the master may communicate ex parte with the court or a party;

(3) the nature of the materials to be preserved and filed as the record of the master's activities;

(4) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations;

(5) the basis, terms, and procedure for fixing the master's compensation under Rule 53.08; and

(6) the extent to which, if at all, the parties and the master must use the court's E-Filing System in the proceedings before the master.

**(c) Entry of Order.** The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

**(d) Amendment.** The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

(Amended effective January 1, 2006; amended effective July 1, 2015.)

*[For text of 53.03 to 53.09, see M.S. 2014, Volume 15]*

#### **Advisory Committee Comment - 2006 Amendment**

*Rule 53 is replaced by a new rule derived nearly verbatim from its federal counterpart, Fed. R. Civ. P. 53. The federal rule was extensively revised by amendment in 2003. That amendment was taken up by the federal advisory committee after it had received empirical research on the use of masters in federal court. See THOMAS E. WILLGING ET AL., SPECIAL MASTERS' INCIDENCE AND ACTIVITY (Fed. Jud. Ctr. 2000).*

*The federal rule provides significantly more detailed guidance to courts and litigants on the proper use of masters than either its predecessor or the current Minnesota rule. The committee believes that the changes to the federal rule are thoughtful and are valuable to litigants, and therefore appropriate for adoption in Minnesota.*

*The rule is not intended to expand the use of masters, but is designed to make the use of masters more readily accomplished in the minority of cases where their use is warranted.*

*Rule 53.01 includes specific guidance on the circumstances justifying or permitting the appointment of a master. Most significantly, the rule clarifies that in the absence of consent a master cannot be assigned to try issues on which the parties are entitled to a jury trial; mere press of other business would not trump the jury trial right. Although the court has greater latitude under the rule for issues triable to the court, either consent or some truly exceptional circumstances must be present. Short of trying issues, however, there are many roles that masters may play in civil cases, particularly in complex cases where the parties consent to the appointment. See generally Lynn Jokela & David F. Herr, *Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool*, 31 WM. MITCHELL L. REV. 1299 (2005).*

*Rule 53.02 establishes specific requirements for the order appointing a master. These subjects reflect a form of "best practices" for the use of masters, and they define procedures to be followed upon referral to a master. The rule intentionally makes these provisions mandatory because they are matters prone to dispute if not resolved at the time of appointment.*

*Rule 53.03 clarifies the extent of a master's authority and defines those powers expansively within the confines of the duties assigned to the master. The rule explicitly authorizes the imposition of discovery sanctions other than contempt by a master, and allows a master to recommend imposition of contempt sanctions.*

*The procedures established under Rule 53.07 are intended to clarify the role of master and ensure that all parties, including the appointing judge and appointed master, understand the master's role. The standards of review of a master's decisions are particularly important to the parties and the court, and are set forth with special detail.*

*Compensation of masters under this rule should be established in the order of appointment. See Rule 53.02(b)(5). In the majority of cases, compensation will be ordered to be paid by the parties pursuant to Rule 53.08(b)(1). The provision of Rule 53.08(b)(2) provides for payment from a fund created by the litigation, as where fees are awarded under the "common fund" doctrine, or by a fund that is the subject matter of the litigation. The federal rule advisory committee has recognized that it may be appropriate to revise the allocation ordered on an interim basis once the action is concluded. See Fed. R. Civ. P. 53(h), *Advis. Comm. Notes - 2003 Amend.*, reprinted in *FED. CIV. JUD. PROC. & RULES 237* (West 2005 ed.).*

*Rule 53.09 distinguishes between masters under this rule, and regular court employees authorized as "referees" by statute. "Statutory referees" as used in the rule refers to court employees, whether full- or part-time, who serve regularly in multiple cases or calendars. See, e.g., Minnesota Statutes, sections 260.031 (juvenile court referees authorized); 484.013, subdivision 3 (referees authorized for housing calendar consolidation program); 484.70 (referees generally in district court); 491A.03, subdivision 1, (2004) (referees in conciliation court in second and fourth districts). In certain situations, a "referee" appointed pursuant to statute for a single case should be viewed as a master under Rule 53. See, e.g., Minnesota Statutes, sections 116B.05 (referee in particular environmental action); 558.04 (2004) (referees for partition of real estate). The procedures governing statutory referees are generally found in the statutes authorizing their use.*

**Advisory Committee Comments - 2015 Amendments**

*Rule 53.02(b) is amended to add a new subdivision (6) that expressly required the court's appointment order to address the extent to which the parties and an appointed master must use the court's E-Filing System. This provision recognizes that a particular master may not otherwise be a registered user of the court's E-Filing System, and it may be appropriate either to direct that the parties and the master use the system for all service and filing or in the rare case, to excuse the master and parties from doing so.*

**Rule 54. Judgments; Costs**

*[For text of 54.01 to 54.03, see M.S. 2014, Volume 15]*

**54.04 Costs**

**(a) Costs and disbursements allowed.** Costs and disbursements shall be allowed as provided by law.

**(b) Application for costs and disbursements.** A party seeking to recover costs and disbursements must serve and file a detailed application for taxation of costs and disbursements with the court administrator, substantially in the form as published by the state court administrator. The application must be signed under oath or penalty of perjury pursuant to Minnesota Statutes, section 358.116, and must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements. A party may, but is not required to, serve and file a memorandum of law with an application for taxation of costs and disbursements.

**(c) Objections.** Not later than seven days after service of the application by any party, any other party may file a separate application as in section (b), above, or may file written objections to the award of any costs or disbursements sought by any other party, specifying the grounds for each objection.

**(d) Decision.** Costs and disbursements may be taxed by the court administrator or a district court judge at any time after all parties have been allowed an opportunity to file applications and to object to the application of any other party as provided in this rule. The judge or court administrator may tax any costs and disbursements allowed by law.

**(e) Review by judge.** If costs and disbursements are taxed by the court administrator, any party aggrieved by the action of the court administrator may serve and file a notice of appeal not later than seven days after the court administrator serves notice of taxation on all parties. Any other party may file a response to the appeal not later than seven days after the appeal is served. The appeal shall thereupon be decided by a district court judge and determined upon the record before the court administrator.

**(f) Judgment for costs.** When costs and disbursements have been determined, whether by a district court judge or by the court administrator with no appeal taken to a district court judge, they shall promptly be inserted in the judgment.

(Amended effective July 1, 2010; amended effective July 1, 2015.)

**Advisory Committee Comment - 2010 Amendment**

*Rule 54.04 is amended both to clarify its operation and to improve the procedure for taxing costs by the court administrator and the review of those decisions by the district court judge. The amended process is commenced by filing an application on a form established by the State Court Administrator and made available on the Judicial Branch website (or in substantially the same form).*

**Advisory Committee Comments - 2015 Amendments**

*Rule 54.04 is amended to implement a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) (codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically by rule that*

*notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, cost applications may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."*

#### **Rule 56. Summary Judgment**

*[For text of 56.01 to 56.04, see M.S. 2014, Volume 15]*

#### **56.05 Form of Affidavits; Further Testimony; Defense Required**

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents or parts thereof referred to in an affidavit shall be attached thereto or served therewith. A "sworn copy" includes documents that are authenticated by a signature under penalty of perjury, pursuant to Minnesota Statutes, section 358.116. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(Amended effective July 1, 2015.)

#### ***Advisory Committee Comments - 2015 Amendments***

*Rule 56.05 is amended in two ways. The first is not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.*

*The second change is substantive in nature, and expressly implements a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) (codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, summary judgment affidavits may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."*

*[For text of 56.06 and 56.07, see M.S. 2014, Volume 15]*

#### **Rule 65. Injunctions**

*[For text of 65.01 and 65.02, see M.S. 2014, Volume 15]*

#### **65.03 Security**

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the

payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any documents affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the court administrator, who shall forthwith transmit copies to the sureties if their addresses are known.

(Amended effective July 1, 2015.)

*[For text of 65.04, see M.S. 2014, Volume 15]*

***Advisory Committee Comment - 2000 Amendment***

*This rule is entirely new in the Minnesota Rules; it is drawn directly from Fed. R. Civ. P. 65(d). There is no comparable provision currently in the Minnesota Rules and questions do arise about what is necessary to make sure that a party is subject to a court's injunctive order. The amended rule is intended to resolve those questions.*

***Advisory Committee Comments - 2015 Amendments***

*The amendments to Rule 65.03 are not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them. The word "transmit" is used in preference to "mail," recognizing that many documents will be delivered by electronic or means other than the United States mail.*

**Rule 77. District Courts and Court Administrators**

**77.01 District Courts Always Open**

The district courts shall be deemed always open for the purpose of filing any pleading or other proper documents, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(Amended effective July 1, 2015.)

*[For text of 77.02 to 77.04, see M.S. 2014, Volume 15]*

***Advisory Committee Comment - 2012 Amendment***

*Rule 77.04 is amended to permit any notice required by the rule to be sent by electronic means in all cases. Although this will necessarily occur in cases using mandatory e-filing and e-service, the rule permits court administrators to use e-mail or electronic noticing in any other case where it is feasible.*

*Notice is required to be provided to the last known address of the party or attorney. The burden is squarely on the party or attorney to advise the court of any changes in address. This rule should be read in conjunction with Rule 13.02 of the General Rules of Practice which permits the court administrator to discontinue providing postal notice where that last known address is known to be obsolete, typically by the return of prior mailings by the postal service.*

**APPENDIX OF FORMS****(See Rule 84)****INTRODUCTORY STATEMENT**

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each pleading, motion, or other document should have a caption similar to that of the summons, with the designation of the particular document substituted for the word "SUMMONS." In the caption of the summons and in the caption of the complaint all parties must be named, but in other pleadings and documents it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4.01, 7.02(2), 10.01.

3. Each pleading, motion, and other document is to be signed in his or her individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his or her address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.

4. If a party is self-represented, the signature and address of the party are required in place of those of the attorney.

*[For text of Forms 1 to 23, see M.S. 2014, Volume 15]*