

Minnesota Sentencing Guidelines and Commentary

August 2020 Amendments

This document is a staff compilation of all modifications that the Minnesota Sentencing Guidelines Commission made to the August 1, 2019, edition of the Minnesota Sentencing Guidelines and Commentary. Each modification contained in this compilation has a specified effective date of August 1, 2020.*

A. Severity-Level Rankings

On July 25, 2019, after public hearing, the Commission adopted the following severity-level rankings by amending the 2019 Minn. Sentencing Guidelines sections 5.A (Offense Severity Reference Table) and 5.B (Severity Level by Statutory Citation).

The following amendments are effective August 1, 2020, and apply to offenses committed on or after that date.

1. Rank Escape from Electronic Monitoring at Severity Level 3

Adopted Modifications: The Commission adopted a proposal to assign Severity Level 3 to Escape from Electronic Monitoring under Minn. Stat. § 609.485, subd. 4(f). The offense is now designated as unranked. Additionally, the Commission adopted a proposal to strike the word “home” from the title to conform to the statute.

Adopted modifications to 2019 Minn. Sentencing Guidelines §§ 5.A and 5.B:

5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
Unranked	Escape from Electronic Home Monitoring	609.485, subd. 4(f)

* See Minn. Sentencing Guidelines § 3.G for an explanation of how effective dates are implemented.

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Severity Level	Offense Title	Statute Number
<u>3</u>	<u>Escape from Electronic Monitoring</u>	<u>609.485, subd. 4(f)</u>

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.485 subd. 4(f)	Escape from Electronic Home Monitoring	Unranked <u>3</u>

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2. Rank Offering Counterfeit Currency

Adopted Modifications: The Commission adopted a proposal to rank Offering Counterfeit Currency under Minn. Stat. § 609.632, subd. 3, at Severity Level 2 (\$5,000 or Less), Severity Level 3 (\$5,001–\$35,000), and Severity Level 6 (Over \$35,000). Counterfeiting of Currency is now designated as unranked, and that designation will continue for Counterfeiting of Currency (Manufacturing or Printing) and Counterfeiting of Currency (Means for False Reproduction).

Adopted modifications to 2019 Minn. Sentencing Guidelines §§ 5.A and 5.B:

5.A. Offense Severity Reference Table

Severity Level	Offense Title	Statute Number
6	<u>Offering Counterfeit Currency (Over \$35,000)</u>	<u>609.632, subd. 3 with subd. 4(b)(1)</u>

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Severity Level	Offense Title	Statute Number
3	<u>Offering Counterfeit Currency (\$5,001–\$35,000)</u>	<u>609.632, subd. 3 with subd. 4(b)(2)</u>

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Severity Level	Offense Title	Statute Number
2	<u>Offering Counterfeit Currency (\$5,000 or Less)</u>	<u>609.632, subd. 3 with subd. 4(b)(3)</u>

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Severity Level	Offense Title	Statute Number
UNRANKED	<u>Counterfeiting of Currency (Manufacturing or Printing/Means for False Reproduction)</u>	<u>609.632, subd. 1 & 2 with subd. 4(a)</u>

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
<u>609.632 subd. 3 with subd. 4(b)(1)</u>	<u>Offering Counterfeit Currency (Over \$35,000)</u>	<u>6</u>
<u>609.632 subd. 3 with subd. 4(b)(2)</u>	<u>Offering Counterfeit Currency (\$5,001–\$35,000)</u>	<u>3</u>
<u>609.632 subd. 3 with subd. 4(b)(3)</u>	<u>Offering Counterfeit Currency (\$5,000 or Less)</u>	<u>2</u>
<u>609.632 subd. 1 & 2 with subd. 4(a)</u>	<u>Counterfeiting of Currency (Manufacturing or Printing/Means for False Reproduction)</u>	Unranked

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B. Five-Year Presumptive Probation Cap

On January 9, 2020, after public hearing, the Commission adopted a proposal to amend the 2019 Minn. Sentencing Guidelines section 3.A (Establishing Conditions of Stayed Sentences) to allow for a presumptive probation term, subject to departure, of up to five years or the statutory maximum sentence, whichever is less, for most felony offenses, and to make conforming amendments to sections 1.B (Definitions), 2.C (Presumptive Sentence), and 2.D (Departures from the Guidelines).

On July 23, 2020, after public hearing, the Commission adopted a proposal to amend the commentary in section 3.A. The comments are modified to conform to, and clarify the Commission’s intent with respect to, the amendments to section 3.A.

The following amendments are effective August 1, 2020, and apply to offenses committed on or after that date.

Adopted modifications to 2019 Minn. Sentencing Guidelines §§ 1.B, 2.C, 2.D, and 3.A:

Minnesota Sentencing Guidelines and Commentary

1. Purpose and Definitions

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B. Definitions

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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 stayed sentence with a length of stay other than as provided in section 3.A.2 is also a “departure.”

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- b. Durational Departure. A “durational departure” occurs when the court orders a sentence with a prison duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid or when the court pronounces a length of stay other than as provided in section 3.A.2.

- (1) Aggravated Durational Departure. An "aggravated durational departure" occurs when the court pronounces a prison duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid or when the court pronounces a length of stay longer than provided in section 3.A.2.
- (2) Mitigated Durational Departure. A "mitigated durational departure" occurs when the court pronounces a prison sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

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13. Presumptive Sentence. "Presumptive sentences" are those sentences provided on the Sentencing Guidelines Grids and in section 3.A.2. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.

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2. Determining Presumptive Sentences

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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. Section 3.A governs conditions of stayed sentences.

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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 prison range, and within the applicable length of stay, 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 prison range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines. A stayed sentence with a length of stay other than as provided in section 3.A.2 is also 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, each requiring written departure reasons. 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.

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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:~~ departure:

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3. Related Policies

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the ~~appropriate cell on the applicable Grid specifies court orders~~ 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, as provided in section 3.A.2~~ and may establish appropriate conditions subject to the considerations in section 3.A.3.
 - 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 prison 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.

2. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.
- b. Subject to the limitation in section 3.A.2.a, the pronounced length of stay may exceed the presumptive prison sentence duration provided in the appropriate cell on the applicable Grid.
- c. If the court by departure exceeds the limitation in section 3.A.2.a, the length of stay must not exceed the statutory maximum punishment for the offense.
- d. The limitation in section 3.A.2.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 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), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 609.342 (Criminal Sexual Conduct 1st Degree), 609.343 (Criminal Sexual Conduct 2nd Degree), 609.344 (Criminal Sexual Conduct 3rd Degree), 609.345 (Criminal Sexual Conduct 4th Degree), or 609.3451 (Criminal Sexual Conduct 5th Degree).
- e. Extensions of probation are governed by statute (see Minn. Stat. § 609.135, subd. 2(g)–(h)).

Comment

~~3.A.102.~~ 3.A.201. *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 punishment for the conviction offense. See Minn. Stat. § 609.135, subd. 2. Absent substantial and compelling reasons to depart, however, the*

length of the stay may not exceed five years, unless the current offense is a homicide or criminal sexual conduct offense, including an attempt or conspiracy. 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 five years—or, upon a finding of substantial and compelling reasons to depart, up to ten years. ~~The~~ Regardless of the length of stay, 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.

3.A.202. Before section 3.A.2.a took effect, case law required durational departures to be based on the nature of the offense rather than on the individual characteristics of the offender. See State v. Solberg, 882 N.W.2d 618, 625 (Minn. 2016). Although a pronounced length of stay longer than provided in section 3.A.2 is defined as an aggravated durational departure, the Commission recognizes that judicial considerations for pronouncing a longer-than-recommended length of stay may differ substantially from considerations for imposing a longer-than-recommended prison duration. As a result of these differences, the individual characteristics of the offender may be relevant to the district court’s finding of substantial and compelling reasons justifying a longer-than-recommended length of stay.

3.A.203. Within section 3.A.2, “statutory maximum punishment” refers to the applicable maximum period for a stay of sentence established in statute. For most felonies, this is the maximum period for which the sentence of imprisonment might have been imposed, but, for some felonies, this is four or six years. Minn. Stat § 609.135, subd. 2(a)–(b).

2.3. Other Conditions of Stayed Sentences. While the Commission has otherwise 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:

- deterrence;
- public condemnation of criminal conduct;
- public safety;
- rehabilitation;
- restitution;
- retribution; and
- 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:

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(6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.

Comment

~~**3.A.201-3.A.301.**~~ *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. Minn. Stat. § 244.09, subd. 5 permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop has developed such guidelines during its initial guideline development effort. The Commission has provided some language in the above section of the Guidelines that provides with respect to the pronounced length of stay in section 3.A.2, and has provided additional, general direction in the use of conditions of stayed sentences in the above section.*

~~**3.A.202-3.A.302.**~~ *While the Commission has resolved not to develop otherwise not developed 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 Minn. Stat. § 609.135, subd. 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.*

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C. Technical Changes to Appendix 1 – Citation for First Degree DWI

On July 23, 2020, after public hearing, the Commission adopted a proposal to modify Appendix 1 by correcting the citation for Driving while Intoxicated. This resulted from a technical amendment in the Revisor’s Bill, 2020 Minn. Laws ch. 83, art. 1, § 57.

The following amendments are effective August 1, 2020, and apply to offenses committed on or after that date.

- **Citation for Criminal Vehicular Homicide in First Degree DWI**

2020 Minn. Laws [ch. 83, art. 1, § 57](#)

[Chapter 83, art. 1, § 57](#) of the 2020 Regular Session Laws, the Revisor’s Bill, included technical amendments to Minn. Stat. § 169A.24, subd. 1, that affect Appendix 1 of the Guidelines.

Description: One of the ways a person is guilty of First-Degree Driving While Impaired (DWI) is if they have previously been convicted of felony Criminal Vehicular Homicide (CVH) or Criminal Vehicular Operation (CVO) under Minn. Stat. §§ 609.2112, 609.2113, or 609.2114. The “paragraph (a)” is missing for two references in Minn. Stat. § 169A.24, subd. 1(3)(iii). The law corrects the omission by inserting “paragraph (a)” in subd. 1(3)(iii) as displayed, below.

- CVH under Minn. Stat. § 609.2112, subd. 1, paragraph (a); and
- CVO; Unborn Child under Minn. Stat. § 609.2114, subd. 1, paragraph (a).

Adopted modifications to 2019 Minn. Sentencing Guidelines Appendix 1:

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.

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Statute	Offense	Prerequisite or Conditions	Minimum Duration
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(a)(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(a)(2) thru (6); § 609.2114.2(2) thru (6)	Grid Time

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