

2016 Sentencing Guidelines Modifications

EFFECTIVE AUGUST 1, 2016

Where to Begin

Always start with the Guidelines in effect when the current offense occurred.

- Guidelines are in effect for offenses committed on August 1 and remain in effect for offenses committed thru July 31. Example: the 2016 Guidelines are in effect 8/1/2016 thru 7/31/2017.

- Use Guidelines to find:
 - Severity level of the current offense;
 - Rules for applying criminal history;
 - Policies pertaining to such items as modifiers, Hernandizing, mandatory minimums, and consecutive sentencing.
 - The presumptive disposition and duration – the Guidelines sentence.

Drug Modifications

Drug Offender Grid

Section 4.C. Drug Offender Grid

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

Vertical axis represents the severity level of the current offense. Drug felonies are ranked from D1-D9. The offenses listed on the grid are examples of common offenses at that severity level.

The horizontal axis represents the offender's total criminal history score.

Cells above the disposition line are presumptive commitments; cells below are presumptive stayed sentences.

Each individual cell on the grid contains the *presumptive duration* of a sentence in months. For cells above the disposition line, a range is also given.

For certain offenses, the lower range will not apply for D9 and D8 offenses. This will be discussed later in detail.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i> D9	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>Controlled Substance Crime, 1st Degree</i> D8	65 <i>56*-78</i>	75 <i>64*-90</i>	85 <i>73*-102</i>	95 <i>81*-114</i>	105 <i>90*-126</i>	115 <i>98*-138</i>	125 <i>107*-150</i>
<i>Controlled Substance Crime, 2nd Degree</i> D7	48	58	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>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i> D6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i> D5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i> D4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i> D3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i> D2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i> D1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



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.

SUBSEQUENT DRUG OFFENSES: Amendments to Minn. Stat. § 152.01, subd. 16a

Statute is now amended to read:

“A ‘subsequent controlled substance conviction’ means that before commission of the offense for which the person is convicted under this chapter (152), the person was convicted of a violation of section 152.021 or 152.022, including attempt or conspiracy, or was convicted of a similar offense by the United States or another state, provided that, ten years have not elapsed since discharge from sentence.

What’s new:

Only prior 1st and 2nd degree drug offenses count toward making the current offense a subsequent;

Prior adjudications under Minn. Stat. § 152.18 will not count toward making the current offense a subsequent.

Most obvious change:

The “Drug Offense (Subsequent)” modifier will no longer be used on 3rd thru 5th degree offenses with prior drug offenses – those offenses no longer have mandatory minimums.

“AGGRAVATING FACTORS:”

New Subdivision: Minn. Stat. § 152.01, subd. 24

Statute is now amended to read:

Subd. 24. **Aggravating factor.** Each of the following is an “aggravating factor”;

- (1) The defendant, within the previous ten years, has been convicted of a violent crime, as defined in section 609.1095, subd. 1(d), other than a violation of a provision under this chapter, including an attempt or conspiracy, or was convicted of a similar offense by the United States or another state;

Why is this being pointed out?

Because of the word, “Aggravating.”

- It is important to understand that this subdivision is listing factors that are *an element of the crime to aggravate the offense*.
- These may appear similar to the Aggravated Departure reasons listed in the Guidelines, but these reasons are built into the conviction offense by the charging authority.

“AGGRAVATING FACTORS:”

New Subdivision: Minn. Stat. § 152.01, subd. 24, cont.

“AGGRAVATING FACTORS” UNDER NEW SUBD. 24

“Violent crime” conviction in 10 years

Offense committed for benefit of gang

Separate acts in three counties

Interstate/international transfer involved

Three separate sale transactions

Evidence of high position in drug distribution hierarchy

Used position/status (of trust, e.g.)

Sale to child/vulnerable adult

In school/park zone, prison, or treatment facility

Evidence of quantities substantially larger than threshold.

Not identical to MSG § 2.D.3.b(5)

Not identical to Minn. Stat. § 244.10, subd. 5a(5), list

AGGRAVATED 1ST DEGREE CONTROLLED SUBSTANCE CRIME:

New crime: Minn. Stat. § 152.021, subd. 2b

Aggravated controlled substance crime in the first degree

- A person is guilty of aggravated controlled substance crime in the first degree if the person violates subd. 1(1), (2), (3), (4), or (5), or subd. 2(a)(1), (2), or (3), and the person or an accomplice sells or possesses 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue and:
 - (1) The person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or
 - (2) The offense involves two aggravating factors from new subd. 24

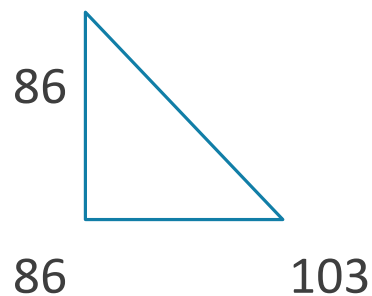
<i>Aggravated Controlled Substance Crime, 1st Degree Manufacture of Any Amt. Meth</i>	D9	86 <i>74*-103</i>	98 <i>84*-117</i>	110 <i>94*-132</i>	122 <i>104*-146</i>	134 <i>114*-160</i>	146 <i>125*-175</i>	158 <i>135*-189</i>
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New Penalty: Minn. Stat. § 152.021, subd. 3(d) for Certain Controlled Substance 1st Degree Offenses

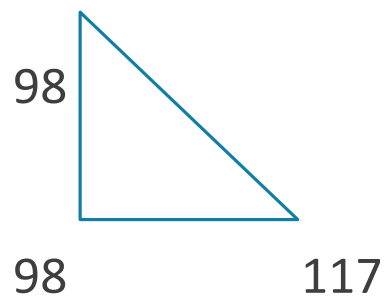
According to subd. 3(d), a person convicted under subd. 2b shall be committed to the commissioner of corrections for not less than 86 months or the presumptive fixed sentence under the Guidelines, whichever is greater.

This offense will be found at a Severity Level D9 on the Drug Offender Grid.

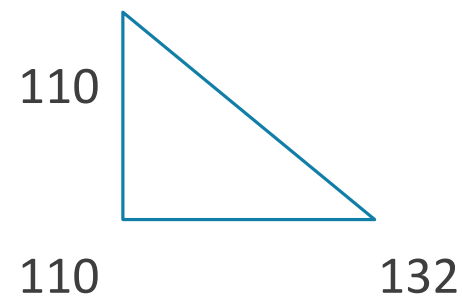
How this will work – the “middle of the box” duration will become the lower end of the range.



CH = 0



CH = 1



CH = 2

Etc..... Make the lower end of the range the same as the presumptive sentence

Grid Duration Changes for 1st Degree Controlled Substance

This offense is now found under Severity Level D8 on the Drug Offender Grid, with new durations.

1st degree still has a subsequent provision in statute, but remember: Only a prior 1st or 2nd degree drug offense is a qualifying prior for the mandatory minimum under Minn. Stat. § 152.01, subd. 16a.

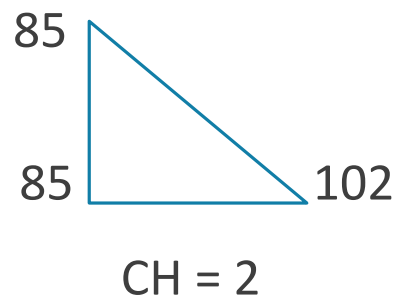
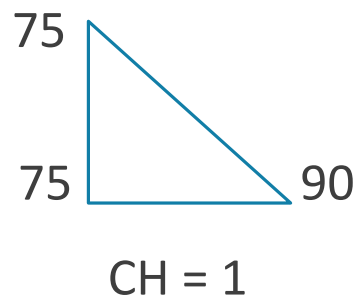
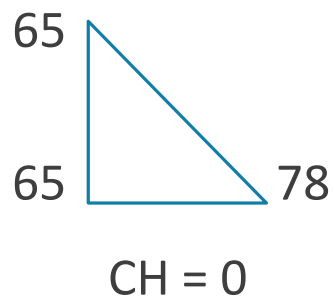
<i>Controlled Substance Crime, 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150
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New Penalty: Minn. Stat. § 152.021, subd. 3(c) for Certain Controlled Substance 1st Degree Offenses

According to subd. 3(c), if the defendant is convicted under subd. 1(1), (2), (3),(4), or (5), or subd. 2(a)(1), (2), or (3), and the defendant or an accomplice sold or possessed 100 or more grams, or 500 or more dosage units...that person shall be committed to the Commissioner of Corrections for not less than 65 months or the presumptive fixed sentence under the Guidelines, whichever is greater.

This offense will be found at a Severity Level D8 on the Drug Offender Grid.

How this will work – the “middle of the box” duration will become the lower end of the range.



Etc.... Make the lower end of the range the same as the presumptive sentence

Grid Disposition Changes for 2nd Degree Controlled Substance

These offenses are now found under Severity Level D7 on the Drug Offender Grid.

Although you will notice that the durations are the same as they were on the Standard Grid, first-time offenses at Criminal History Score=0 and Criminal History Score=1, call for stayed sentences.

2nd degree still has a subsequent provision in statute, but remember: Only a prior 1st or 2nd degree drug offense is a qualifying prior for the mandatory minimum under Minn. Stat. § 152.01, subd. 16a.

<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	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>
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3rd and 4th Degree Controlled Substance Changes – No Longer Have Subsequent Offense

3rd Degree

The subsequent mandatory minimum under Minn. Stat. § 152.023, subd. 3(b) has been repealed (3(c), regarding multiple sales over time, has been renumbered as 3(b)).

- That means even though the current offense may appear to be a subsequent offense due to prior drug offenses, there is no longer a provision to make it a mandatory commit for at least 24 months.

4th Degree

The subsequent mandatory minimum under Minn. Stat. § 152.024, subd. 3(b) has been repealed.

- That means even though the current offense may appear to be a subsequent offense due to prior drug offenses, there is no longer a provision for the mandatory 12 month jail time.

5th Degree Controlled Substance Changes – No Subsequent and New Penalty Statutes

The 6-month mandatory minimum of jail time under Minn. Stat. § 152.025, subd. 1(b) and 2(b) has been repealed.

New penalty statutes for 5th degree are:

- Minn. Stat. § 152.025, subd. 4(a): A person convicted under the provisions of 2(1) [possession], who has not been previously convicted of a violation of this chapter or a similar offense in another jurisdiction, is guilty of a gross misdemeanor if:
 - (1) the amount of the controlled substance possessed, other than heroin, is less than .25 grams or one dosage unit or less if the controlled substance was possessed in dosage units; or
 - (2) the controlled substance possess is heroin and the amount possessed is less than 0.05 grams.
- Minn. Stat. § 152.025, subd. 4(b): A person convicted under the provisions of subd. 1; subd. 2(1), unless the conduct is described in 4(a); or subd. 2(2), may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Mandatory Sentence Changes

Under Minn. Stat. § 152.026, a defendant convicted and sentenced to a mandatory sentence under 152.021 or 152.022 (1st and 2nd degree only) is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law.

“Term of Imprisonment,” under Minn. Stat. § 244.01, subd. 8, is the period of time equal to two-thirds of the inmate’s executed sentence.

New Possession of Drug Paraphernalia Misdemeanor

Currently:

Minn. Stat. § 152.092, (a) is a petty misdemeanor, and not eligible under the Guidelines as a prior offense.

What's new:

Minn. Stat. § 152.092, (b): A person who violates (a) and has previously violated (a) on two or more occasions has committed a crime and may be sentenced to imprisonment for up to 90 days or to payment of a fine up to \$1,000, or both.

Why is this being pointed out?

Because other states may treat this offense as a gross misdemeanor or felony. If the non-MN offense is proved to be equivalent to the MN statute, it still cannot be included in criminal history as it is not found on the Targeted Misdemeanor List.

Changes to Stay of Adjudication under 152.18

In addition to the change in subsequent eligibility, other changes have been implemented. Please read the statute in order to understand what is (and is not) eligible under this adjudication.

152.18, subd.1. **Deferring prosecution for certain first time drug offenders.** (a) A court may defer prosecution as provided in paragraph (c) for any person found guilty, after trial or upon a plea of guilty, of a violation of section 152.023, subdivision 2, 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, who:

(1) has not previously participated in or completed a diversion program authorized under section 401.065;

(2) has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section; and

(3) has not been convicted of a felony violation of this chapter, including a felony-level attempt or conspiracy, or been convicted by the United States or another state of a similar offense that would have been a felony under this chapter if committed in Minnesota, unless ten years have elapsed since discharge from sentence.

(b) The court must defer prosecution as provided in paragraph (c) for any person found guilty of a violation of section 152.025, subdivision 2, who:

(1) meets the criteria listed in paragraph (a), clauses (1) to (3); and

(2) has not previously been convicted of a felony offense under any state or federal law or of a gross misdemeanor under section 152.025.

Subsequent 1st Degree Drug + Dangerous Weapon: Changes to Minn. Stat. § 609.11, subd. 5a

Consecutive sentencing of the drug mandatory + the dangerous weapon mandatory (“Stacking” Mandatory Minimums)

Who’s eligible?

Subsequent 1st and 2nd degree under subd. 3(b) (found at Severity Level D7 and D8); or

Aggravated 1st degree (2 aggravating factors) under Minn. Stat. § 152.021, subd. 2b(2).

When there is a weapon involved, the sentence will be the mand. min. for the drug offense + the mand. min. for the weapon **OR** the Grid time, whichever is greater.

Who’s not eligible?

Subsequent 3rd and 4th degree (*Subds. 3(b) was repealed*)

Aggravated 1st degree (firearm) under Minn. Stat. § 152.021, subd. 2b(1)

1st degree (“high-quantity”) under Minn. Stat. § 152.021, subd. 3(c)

Aggravated 1st Degree Drug (2 agg. Factors) + Firearm: Consecutive (“Stacking”) Sentencing

Agg. 1st Degree under subd. 2b(2) (Sev. Level D9 and CHS 3) w/a firearm

122 mos. + 36 mos. = 158 mos.

158 months would be the presumptive duration under this provision.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Aggravated Controlled Substance Crime, 1st Degree</i>	D9	86	98	110	122	134	146	158
<i>Manufacture of Any Amt. Meth</i>		74*-103	84*-117	94*-132	104*-146	114*-160	125*-175	135*-189


Subsequent 1st Degree Drug + Firearm: Consecutive (“Stacking”) Sentencing

1st Degree Drug (Severity Level D8) w/ a firearm

48 months + 36 months = 84 months

84 months would be the presumptive duration unless the Grid time was longer – This is true at Criminal History Score (CHS) < 2 (and the lower range for CHS 3).

<i>Controlled Substance Crime, 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150
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Subsequent 1st Degree Drug + Subsequent Firearm: Consecutive (“Stacking”) Sentencing

1st Degree Drug (Severity Level D8) w/ a subsequent firearm

48 months + **60 months** = **108 months**

108 months would be the presumptive duration unless the Grid time was longer – This is true at CHS < 5 (and the lower range for CHS 5).

<i>Controlled Substance Crime, 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150
								

Subsequent 2nd Degree Drug + Firearm: Consecutive (“Stacking”) Sentencing

2nd Degree Drug (Severity Level D7) w/ a firearm

$$\boxed{36 \text{ months}} + \boxed{36 \text{ months}} = \boxed{72 \text{ months}}$$

72 months would be the presumptive duration unless the Grid time was longer – This is true at CHS < 3 (and the lower range for CHS 3).

<i>Controlled Substance Crime, 2nd Degree</i>	D7	48	58	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
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Calculating Prior Felony History – Weighting Scale

To assign weight to priors:

- If *current offense* is found on the Standard Grid or new Drug Offender Grid, use the weighting scale found in § 2.B.1.a.
- If the *current offense* is found on the Sex Offender Grid, use the scale in § 2.B.1.b (not shown).
- Weighted points for Severity Levels D1 - D9 were added to both scales.
- The weighted points for prior drug offenses are the same on both scales.

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, <u>D1 – D2</u>	½
	3 – 5, <u>D3 – D5</u>	1
	6 – 8, <u>D6 – D7</u>	1 ½
	9 – 11, <u>D8 – D9</u>	2
	Murder 1 st Degree	2
	A	2
	B – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

UPDATE: Official Language for Calculating Prior Drug Offenses in Felony History

On November 17, 2016, the Minnesota Sentencing Guidelines Commission decided that, in calculating a Defendant's criminal History score, prior drug convictions are not to be recalculated using post-August 1, 2016 drug threshold weights. The rationale was that Guidelines Comment 2.B.106 applies only to added or removed elements of the offense and does not apply to modifications of an element. Because the changes to the controlled substance laws modified an element, recalculation is not necessary.

The Commission changed Comment 2.B.106. It now reads as follows:

2.B.106. If the prior offense has been removed from the current Severity Offense Reference Table in response to a legislative action that repealed the prior offense and created separate offenses with new or removed elements, use the current severity level for the newly created offense that has been added to Severity Offense Reference Table and encompasses the behavior necessarily proven by the prior conviction. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

An update of the Minnesota Sentencing Guidelines and Commentary that includes this change to Comment 2.B.106 is now available on the MSGC web site at <http://mn.gov/sentencing-guidelines/>.

Drug Offense Severity Level & Weighting

Use the appropriate severity level and weighting of the drug prior based on the MN offense title. This table will aid in assigning the right information.

The degree/severity level/ criminal-history weight before 8/1/2016 is now this degree/severity level/ criminal-history weight on/after 8/1/2016
1st Meth Mfg./9/2	1st Meth Mfg./D9/2
1st/9/2	1st/D8/2
2nd/8/1½	2nd/D7/1½
3rd/6/1½	3rd/D6/1½
4th/4/1	4th/D4/1
5th/2/½	5th/D2/½

Key: "1st/9/2" means 1st Degree controlled substance crime, severity level 9, weight of 2 criminal-history points.
 "1st/D9/2" means 1st Degree controlled substance crime, severity level D9, weight of 2 criminal-history points.

UPDATE: Calculating Prior Drug Offenses in Felony History – Examples

Example 1:

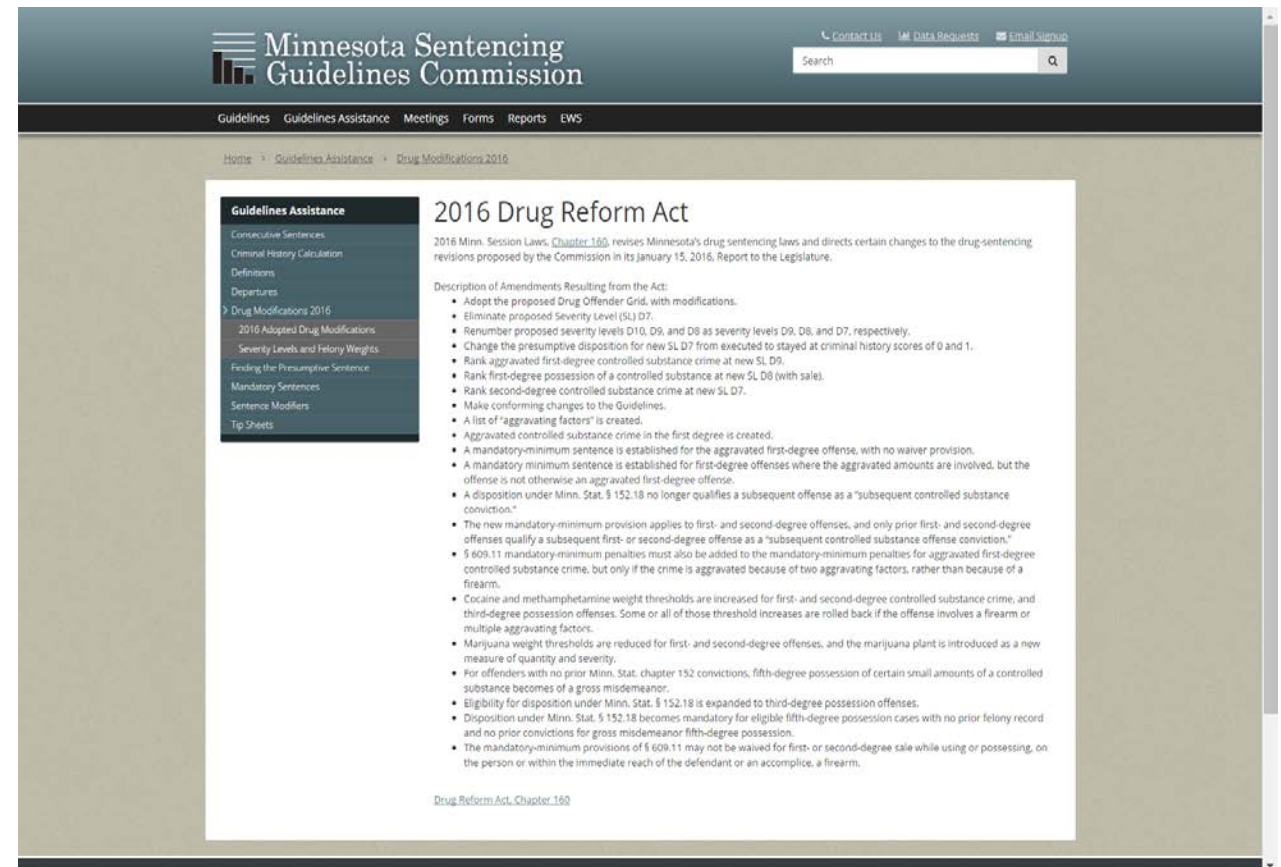
- The offender has a prior 3rd degree drug offense in criminal history.
- When the current felony offense occurred on/before 7/31/2016, the prior 3rd degree drug offense will be a Severity Level 6 weighted at 1.5 points in felony history.
- When the current felony offense occurred on/after 8/1/2016, the prior 3rd degree prior drug offense will be a Severity Level D6 weighted at 1.5 points in felony history.

Example 2:

An offender with a 2015 prior first-time felony 5th Degree conviction for possessing meth “residue” would, for an August 2016 current offense, receive ½ felony point in his criminal history score, because the prior offense was a felony controlled substance crime in the 5th Degree.

Additional Information: Drug Reform Act

For more information on the Drug Reform Act, including a summary of severity levels and felony weights for 2016, visit our website at <http://mn.gov/sentencing-guidelines/assistance/drug-modifications-2016>.



The screenshot displays the Minnesota Sentencing Guidelines Commission website. The header includes the organization's name and a search bar. The navigation menu lists 'Guidelines', 'Guidelines Assistance', 'Meetings', 'Forms', 'Reports', and 'EWS'. The breadcrumb trail shows 'Home > Guidelines Assistance > Drug Modifications 2016'. A sidebar on the left titled 'Guidelines Assistance' contains links for 'Consecutive Sentences', 'Criminal History Calculation', 'Definitions', 'Departures', '2016 Adopted Drug Modifications', 'Severity Levels and Felony Weights', 'Finding the Presumptive Sentence', 'Mandatory Sentences', 'Sentence Modifiers', and 'Tip Sheets'. The main content area is titled '2016 Drug Reform Act' and contains the following text:

2016 Minn. Session Laws, [Chapter 160](#), revises Minnesota's drug sentencing laws and directs certain changes to the drug-sentencing revisions proposed by the Commission in its January 15, 2016, Report to the Legislature.

Description of Amendments Resulting from the Act:

- Adopt the proposed Drug Offender Grid, with modifications.
- Eliminate proposed Severity Level (SL) D7.
- Renumber proposed severity levels D10, D9, and D8 as severity levels D9, D8, and D7, respectively.
- Change the presumptive disposition for new SL D7 from executed to stayed at criminal history scores of 0 and 1.
- Rank aggravated first-degree controlled substance crime at new SL D9.
- Rank first-degree possession of a controlled substance at new SL D8 (with sale).
- Rank second-degree controlled substance crime at new SL D7.
- Make conforming changes to the Guidelines.
- A list of "aggravating factors" is created.
- Aggravated controlled substance crime in the first degree is created.
- A mandatory-minimum sentence is established for the aggravated first-degree offense, with no waiver provision.
- A mandatory minimum sentence is established for first-degree offenses where the aggravated amounts are involved, but the offense is not otherwise an aggravated first-degree offense.
- A disposition under Minn. Stat. § 152.18 no longer qualifies a subsequent offense as a "subsequent controlled substance conviction."
- The new mandatory-minimum provision applies to first- and second-degree offenses, and only prior first- and second-degree offenses qualify a subsequent first- or second-degree offense as a "subsequent controlled substance offense conviction."
- § 609.11 mandatory-minimum penalties must also be added to the mandatory-minimum penalties for aggravated first-degree controlled substance crime, but only if the crime is aggravated because of two aggravating factors, rather than because of a firearm.
- Cocaine and methamphetamine weight thresholds are increased for first- and second-degree controlled substance crime, and third-degree possession offenses. Some or all of those threshold increases are rolled back if the offense involves a firearm or multiple aggravating factors.
- Marijuana weight thresholds are reduced for first- and second-degree offenses, and the marijuana plant is introduced as a new measure of quantity and severity.
- For offenders with no prior Minn. Stat. chapter 152 convictions, fifth-degree possession of certain small amounts of a controlled substance becomes of a gross misdemeanor.
- Eligibility for disposition under Minn. Stat. § 152.18 is expanded to third-degree possession offenses.
- Disposition under Minn. Stat. § 152.18 becomes mandatory for eligible fifth-degree possession cases with no prior felony record and no prior convictions for gross misdemeanor fifth-degree possession.
- The mandatory-minimum provisions of § 609.11 may not be waived for first- or second-degree sale while using or possessing, on the person or within the immediate reach of the defendant or an accomplice, a firearm.

[Drug Reform Act, Chapter 160](#)

Other 2016 Modifications

New and amended offenses
and non-legislative changes
for 2016 not summarized in
the following slides are
available on the website at
at

<http://mn.gov/sentencing-guidelines/guidelines>.

New Offense Modifiers under Guidelines § 2.G

New Offenses

Criminal Vehicular Homicide (Death, qualified prior conviction) under Minn. Stat. § 609.2112, subd. 1(b) and Criminal Vehicular Homicide (Death to an Unborn Child, qualified prior conviction) under Minn. Stat. § 609.2114, subd. 1(b)

- Severity Level 8; add 50% to get the presumptive duration.
- Assign no M/GM units to the qualified prior driving offense because, by virtue of the conviction offense, that prior has been accounted for in the enhanced penalty.

Felony Assault Motivated by Bias – When an offender is sentenced for a felony assault under penalty statute Minn. Stat. § 609.2233, the presumptive duration found in the appropriate cell on the Standard Grid for the underlying offense must be increased by 25%.

- Underlying offenses eligible for this increase are Assault 1st, 2nd, and 3rd degree.

EWS users – if you select the right modifier from the drop down section, the system will calculate the sentence; use these percentages to double check the accuracy. (FYI – this is true for any modifier, not just these.)

Consecutive Sentencing Policy: In General and Presumptive

In general, concurrent sentencing is required (“presumptive”) under the Guidelines.

Consecutive sentences are **presumptive** when:

- Offenses committed during an executed term of imprisonment, disciplinary confinement, or reimprisonment; or
- Offenses committed on escape status from an term of imprisonment, disciplinary confinement, or reimprisonment;
and
- The presumptive disposition for the current offense(s) is commitment.
- Note: an assault committed by an inmate serving under those conditions, or an escape by an inmate from those conditions are always a presumptive commit.

Who’s No Longer Eligible for Presumptive Consecutive?

- Effective August 1, 2016, a consecutive sentence is no longer presumptive for offenses committed on supervised release or conditional release.

Consecutive Sentencing Policy: Permissive

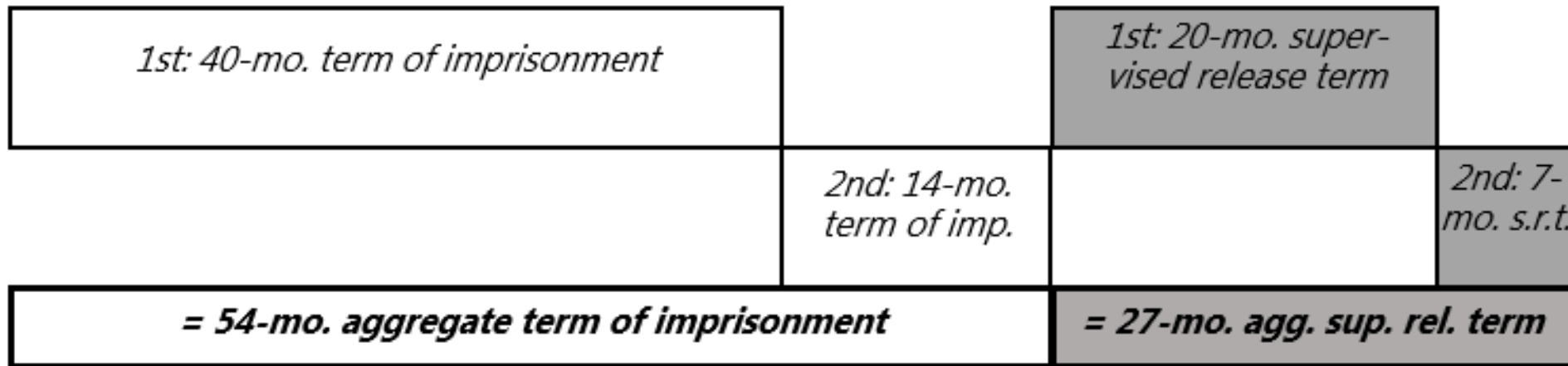
Consecutive sentences may be given without departure (“permissive”) when:

- A current offense is on the list of permissive consecutive offenses in section 6 and the offender has a prior felony sentence for an offense also on the list, and the prior offense has not expired or been discharged; or
- Multiple current offenses are on the list of permissive consecutive offenses in section 6; or
- A current felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from a non-executed felony sentence; or
- A current felony committed while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from an executed felony sentence; or
- A current felony assault in a local jail or workhouse; **and**
- The presumptive disposition for the current offense(s) and prior offense(s), if applicable, is commitment.
- Note: Consecutive sentences are always permissive for fleeing a peace officer or criminal sexual conduct 1st to 4th with force or violence, as permitted under Minn. Stat. § 609.035, subds. 5 and 6.

Consecutive Sentencing Timing: Same Day and Same Court

When a sentence is executed consecutively to another executed sentence on the same day and before the same court, the Commissioner of Corrections aggregates the separate durations into a single fixed sentence.

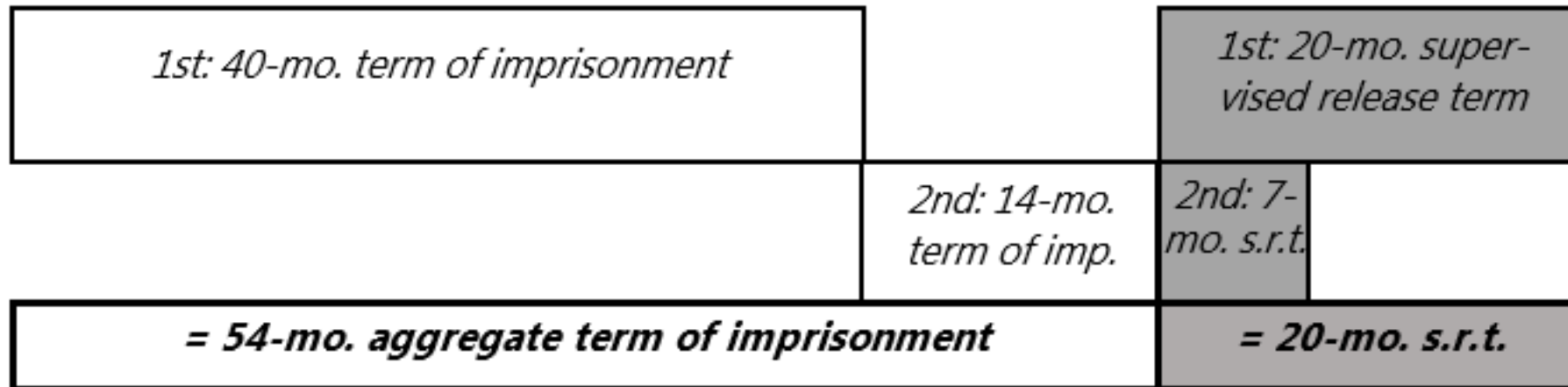
The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third supervised release terms are aggregated and served consecutively as well.



Consecutive Sentencing Timing: Different Days or Different Courts

When two sentences are executed on different days or before different courts, the second sentence is consecutive to the first, and the offender has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated.

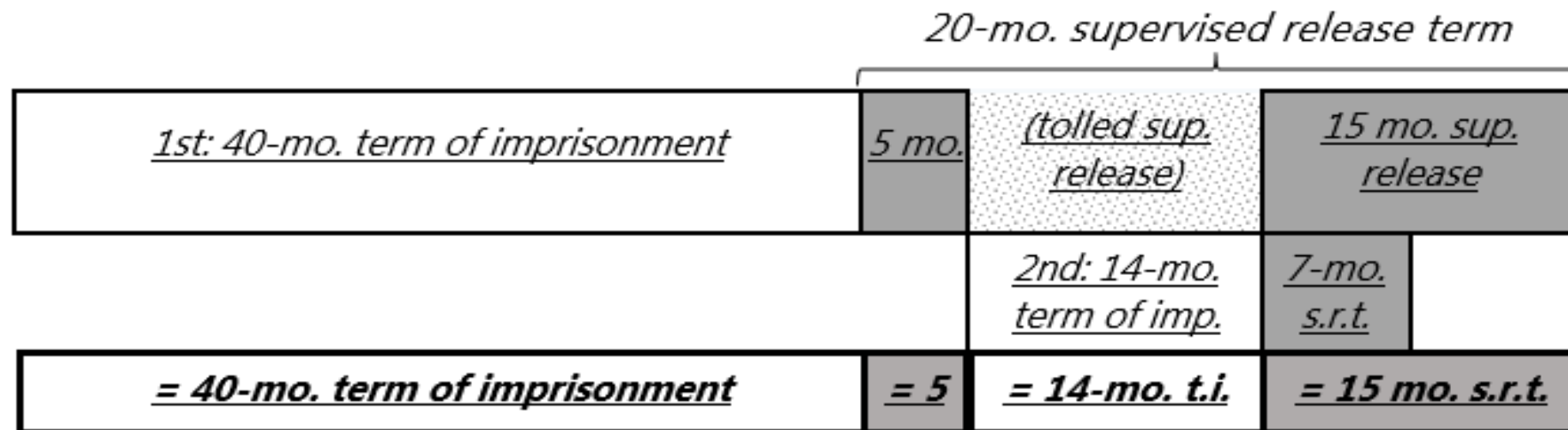
The first supervised release term will not run during the aggregate term of imprisonment, but the supervised release terms will run at the same time as each other.



Consecutive Sentencing Timing: Offender Already Placed on Supervised Release

When an offender has already been placed on supervised release by the time the second, consecutive sentence is executed, the terms of imprisonment cannot be aggregated.

In such a case, the first supervised release term stops running during the second term of imprisonment. When the offender is placed on supervised release for the consecutive sentence, the first supervised release term will resume; the offender will serve the remaining balance on the first supervised release term and the second supervised release term at the same time.



Thank you for your time today!

Questions?

- Please call 651-296-0144, or email at: sentencing.guidelines@state.mn.us.
- Last but not least – you can get your copy of the 2016 Guidelines, Grids, 2016 adopted modifications, and archived editions from previous years on the MSGC website at: <http://mn.gov/sentencing-guidelines/guidelines>.