

Minnesota Sentencing Guidelines Commission

Clarify Non-Minnesota Offense Definitions Policy

February 24, 2016

Issue: Guidelines § 2.B.5 provides factors for courts to use when deciding how to count a prior non-Minnesota offense in an offender’s criminal history score. Language inserted into this section of the Guidelines during the 2012 rewrite—now found in § 2.B.5.b—directs courts to use the offense definitions in effect “when the offense was committed” to determine whether to designate a non-Minnesota conviction as a felony, gross misdemeanor, or misdemeanor.

In apparent contradiction to this Guidelines language is Comment 2.B.502, which directs courts to classify convictions from other jurisdictions using “current Minnesota offense definitions.”

This apparent contradiction between the Guidelines and its Commentary invites resolution by the Commission.

Guidelines Considerations: Guidelines § 2.B.7, which expresses the general rule for determining offense levels for prior offenses, like Comment 2.B.502, directs courts to use the current Minnesota offense definitions when determining the classification of an offense as a felony, gross misdemeanor, misdemeanor, or petty misdemeanor. The 2012 language in § 2.B.5.b expresses a contrary notion: to use the offense definitions in effect at the time of the prior offense’s commission. The only exception to this rule is when a monetary threshold determines the offense classification. In order to adjust for inflation, the Guidelines state that the classification is determined by “the monetary threshold in effect when the prior offense was committed, not the current threshold ...” Guidelines § 2.B.7.b.

Questions for the Commission: (1) Does the Commission wish to resolve this apparent contradiction? (2) If so, does the Commission wish to do so by directing courts to use the current offense definitions, or the definitions in effect at the time of the offense?

Analysis of Alternatives:

- **To take no action** would leave an apparent inconsistency between Guidelines § 2.B.7 (“offense definitions in effect when the offense was committed govern the designation of non-Minnesota convictions”) and Comment 2.B.502 (“classification of

prior offenses ... should be determined by current Minnesota offense definitions”).

- To **use current offense definitions** (staff recommendation) would reconcile § 2.B.7 with Comment 2.B.502, and would also be consistent with other, related policies in Guidelines § 2.B. See also *State v. Quenzer*, [No. A15-0415](#), 2016 WL 208226 at *1 (Minn. App. Jan. 19, 2016) (unpublished) (citing, in what is arguably dicta, *State v. Reece*, 625 N.W.2d 822, 825 (Minn. 2001), a case that predated the rewrite, and Comment 2.B.502, for the proposition that the district court must “ ‘determine how the offender would have been sentenced had the offense occurred in Minnesota at the time of the current offense, not when the offense actually occurred out of state.’ ”).
- To **use definitions in effect at the time of the offense** (by modifying Comment 2.B.502) would reconcile § 2.B.7 and Comment 2.B.502, but would differ from other, related policies in Guidelines § 2.B; namely, §§ 2.B.1 (“The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense”) and 2.B.7.a (“The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions ... and sentencing policies.”).

Staff Recommendation: Clarify that the policy for classifying non-Minnesota prior offenses as petty misdemeanor, misdemeanor, gross misdemeanor, or felony is the same as that for classifying Minnesota prior offenses: based on offense definitions and sentencing policies in effect when the *current Minnesota* offense was committed, with that clarification to take effect August 1, 2016, as outlined below (recommended change at arrow).

[Section 2.]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:

- prior felonies;
- custody status at the time of the offense;
- prior misdemeanors and gross misdemeanors; and
- 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. * * *

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. * * *

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

3. Prior Gross Misdemeanors and Misdemeanors. * * *

4. Prior Juvenile Adjudications. * * *

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:

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

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the current Minnesota 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. * * *

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 Minn. Stat. § 609.02, subds. 2-4a) 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 Minn. Stat. § 609.52.2(a)(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.*