

# Minnesota Sentencing Guidelines Commission

## Current Violent Offender Sentencing Provisions October 26, 2016 Update\*

**Issue:** How often are the current violent offender sentencing provisions used and how often could they be used?

The existing sentencing provisions generally applicable to repeat violent offenders are found in Minn. Stat. § 609.1095. (For repeat sex offenders in particular, see page 5.) Violent crimes are defined as convictions for any of the offenses listed in Table 1 including attempts.

**Table 1: 609.1095 subd. 1d : Violent Crime**

<b>Statute</b>	<b>Offense Description</b>
609.165 & 624.713	Persons with Prior Violent Crime not to Possess Firearms
609.185	Murder 1
609.19	Murder 2
609.195	Murder 3
609.2	Manslaughter 1
609.205	Manslaughter 2
609.21	Criminal Vehicular Homicide and Injury
609.221	Assault 1
609.222	Assault 2
609.223	Assault 3
609.228	Dist. Drugs – Great Bodily Harm
609.235	Use of Drugs to Injure or Facilitate
609.24	Simple Robbery
609.245	Aggravated Robbery
609.25	Kidnapping
609.255	False Imprisonment
609.2661-609.268	Crimes Against Unborn
609.342	Criminal Sexual Conduct 1
609.343	Criminal Sexual Conduct 2
609.344	Criminal Sexual Conduct 3
609.345	Criminal Sexual Conduct 4
609.498 subd. 1	Aggravated Witness Tampering
609.561	Arson 1
609.562	Arson 2
609.582 subd. 1	Burglary 1
609.66 subd. 1e	Drive-By Shooting
609.687	Adulteration
609.855 subd. 5	Shooting at Transit Vehicle
609.229	Crime Benefit Gang
609.377	Felony Provisions Malic. Punish. of Child
609.378	Felony Provisions Child Endangerment

\* This update adds section A.4, which discusses how often § 609.1095, subd. 2, could be applied if it were assumed that “danger to public safety” could be established in every case (page 3). This update also adds section C, which describes special sentencing provisions applicable to sex offenses (page 5).

609.749	Harassment Stalking
Chapter 152	Felony Drug Offenses with Stat Max of 15 years (1st-4th degree)
152.137	Meth Crimes Involving Children

**A. 609.1095 subd. 2 – Aggravated Durational Departure**

1. An aggravated durational departure of up to the statutory maximum is authorized when:
  - Conviction for a violent crime
  - Presumptive Prison Sentence
  - Offender is 18 or Older
  - Offender has two or more prior convictions for violent crimes, and
  - Fact-finder determines that the offender is a danger to public safety
  
2. Frequency of Use

The provision authorizing this aggravated durational departure was used for less than 1% of the cases receiving executed prison sentences from 2011-2015. Table 1 displays how often this sentencing provision was cited as a reason for an aggravated durational departure in the last five years.

**Table 2. Aggravated Durational Departures with 609.1095 subd. 2 Cited**

Sentence Year	# of Prison Sentences	609.1095 subd. 2 cited			
		No		Yes	
2011	3,653	3,647	99.8%	6	0.2%
2012	4,004	3,996	99.8%	8	0.2%
2013	4,193	4,193	99.9%	3	0.1%
2014	4,218	4,214	99.9%	4	0.1%
2015	4,392	4,392	99.9%	5	0.1%
<b>Total</b>	<b>20,460</b>	<b>20,434</b>	<b>99.8%</b>	<b>26</b>	<b>0.1%</b>

3. Offenses

Table 3 displays the offenses for which the violent offender aggravated departure was used from 2011-2015.

**Table 3. Aggravated Departures for Which 609.1095 subd. 2 was Cited, by Offense, Sentenced 2011-2015**

Offense	Number of Cases	Percent
Assault 1	1	3.8%
Assault 2	3	11.5%
Assault 3	3	11.5%
Simple Robbery	2	7.7%
Aggravated Robbery 1	4	15.4%
Kidnaping	4	15.4%
Burglary 1	1	3.8%
Controlled Substance 2	1	3.8%
Prohibited Felon With Gun	6	23.1%
Witness Tampering	1	3.8%
<b>Total</b>	<b>26</b>	<b>100%</b>

4. How often could it be used if it is assumed Danger to Public Safety could be established?

In order to assess how often the departure provision might be used under that assumption, the following cases were eliminated:

- All drug offenses;
- Cases that only qualified as having two prior violent offenses because of a prior drug conviction;
- Criminal Vehicular Homicide or Injury;
- Cases that did not receive a prison sentence - 8 of 115; and
- Cases that received mitigated durational departures - 26 of 107.

**Table 4. Cases Which Might Qualify for Departure under Minn. Stat. § 609.1095 subd. 2 - Assuming Danger to Public Safety Could be Established: Cases Sentenced in 2015**

Offense	Number of Cases	No Durational Departure	Aggravated Duration	Minn. Stat. § 609.1095 sub. 2 cited
Attempted Murder 1	2	1	1	0
Murder 2/3 – Severity 10	1	1	0	0
Assault 1	2	2	0	1
Assault 2	11	8	3	1
Assault 3	14	13	1	0
Simple Robbery	4	4	0	0
Aggravated Robbery 1	6	5	1	1
Aggravated Robbery 2	4	3	1	0
Kidnapping	2	0	2	1
Criminal Sexual Conduct 1	1	1	0	0
Criminal Sexual Conduct 3	3	2	1	0
Burglary 1 – Severity 6	6	6	0	0
Prohibited Felon With Gun	25	25	0	0
Total	81	71	10 (12%)	4 (5%)

**B. 609.1095 subd. 3 – Mandatory Sentence for 3<sup>rd</sup> Violent Felony**

1. The Court must impose an executed prison sentence (regardless of whether presumptive disposition is prison) of at least the presumptive Guidelines duration if:
  - Conviction for a violent crime other than 3<sup>rd</sup> or 4<sup>th</sup> degree drugs
  - Offender has two or more prior convictions for violent crimes other than 3<sup>rd</sup> or 4<sup>th</sup> degree drugs, and
  - Must be convicted for the first prior violent offense before committing the next violent offense

2. Number of Offenses:

From 2011-2015, 22 percent of the offenses sentenced were on the list of violent offenses in 609.1095 subd. 1d (excluding third and fourth degree drug offenses). Table 5 displays the distribution of cases sentenced from 2011-2015.

**Table 5. Number of Violent Crimes per 609.1095 subd. 3, 2011-2015**

Sentence Year	# of Cases	Violent Crime			
		No		Yes	
2011	14,571	11,280	77.4%	3,291	22.6%
2012	15,207	11,851	77.9%	3,356	22.1%
2013	15,318	11,906	77.7%	3,412	22.3%
2014	16,145	12,632	78.2%	3,513	21.8%
2015	16,763	13,227	78.9%	3,536	21.1%
<b>Total</b>	<b>78,004</b>	<b>60,896</b>	<b>78.1%</b>	<b>17,108</b>	<b>21.9%</b>

3. Offenses Qualifying for Mandatory Provision:

Of the 3,536 offenders sentenced in 2015 for a crime defined as a violent crime, 1,111 (31%) had 2 or more true prior offenses (offenses sentenced before the current offense was committed). The worksheets for those offenses were examined in order to determine how many had two or more true prior violent offenses. In order to qualify for the mandatory provision, the prior offenses had to have convictions before the next offense was committed. It was determined that 189 offenses sentenced in 2015 met those criteria. Table 6 displays the cases found to qualify for the mandatory provision by offense as well as their presumptive guidelines dispositions.

**Table 6. Cases Which Qualify for Mandatory Penalty by Presumptive Disposition, Sentenced in 2015**

Offense	Number of Cases	Presumptive Disposition, as Reflected on Worksheet			
		Stay		Prison	
Attempted Murder 1	2	0	0%	2	100%
Intentional Murder 2	2	0	0%	2	100%
Unintentional Murder 2	1	0	0%	1	100%
Manslaughter 1	1	0	0%	1	100%
Criminal Vehicular Injury	1	0	0%	1	100%
Criminal Vehicular Homicide	1	0	0%	1	100%
Assault 1	2	0	0%	2	100%
Assault 2	18	0	0%	18	100%
Assault 3	25	4	16%	21	84%
Simple Robbery	6	0	0%	6	100%
Aggravated Robbery 1	11	0	0%	11	100%
Aggravated Robbery 2	2	1	17%	5	83%
Kidnapping	2	0	0%	2	100%
Criminal Sexual Conduct 1	1	0	0%	1	100%
Criminal Sexual Conduct 3	3	0	0%	3	100%
Criminal Sexual Conduct 4	1	0	0%	1	100%
Stalking	5	3	60%	2	40%
Burglary 1-Severity 6	9	0	0%	9	100%
Burglary 1-with assault or weapon	4	0	0%	4	100%
Meth Crimes Involving Children	1	0	0%	1	100%
Controlled Substance 1	25	0	0%	25	100%
Controlled Substance 2	22	0	0%	22	100%
Prohibited Felon With Gun	40	0	0%	40	100%
<b>Total</b>	<b>189</b>	<b>8</b>	<b>4%</b>	<b>181</b>	<b>96%</b>

#### 4. How Many Got a Prison Sentence?

Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 163 (86%) received a prison sentence. Of the 26 offenders who did not receive a prison sentence, for 18 it was the result of a mitigated dispositional departure- a mitigated dispositional departure rate of 10%.

#### 5. How Many Got a Less than the Presumptive Duration?

Of the 163 offenders sentenced in 2015 who qualified for the mandatory penalty and received a prison sentence, 47 (29%) received a mitigated durational departure. Twelve (7%) received an aggravated durational departure.

#### 6. Compliance Rate

Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 73 (39%) received a sentence that was not in compliance with the mandatory penalty (but see "Impact of Drug Offenses," below) compliance rate of 61%.

#### 7. Impact of Drug Offenses:

- Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 48 (25%) were convicted of a drug offense. Of those 48 drug offenders, 22 (46%) had a prior drug offense as one of the prior violent crimes that qualified them for the mandatory penalty.
- For the 48 drug offenders, the non-compliance rate was 52 percent; 8 (17%) did not receive a prison sentence and of the 40 who did go to prison, 17 (35%) received a mitigated durational departure.
- Of the 189 offenders sentenced in 2015 who qualified for the mandatory penalty, 141 (75%) were convicted of a non-drug offense. Of those 141 non-drug offenders, 16 (11%) had a prior drug offense as one of the prior violent crimes that qualified them for the mandatory penalty.
- For the 141 non-drug offenders, the non-compliance rate was 34 percent; 18 (13%) did not receive a prison sentence and of the 123 who did go to prison, 30 (21%) received a mitigated durational departure.

### **C. 609.3455 – Penalty Provisions Applicable Only to Sex Offenses**

The provisions of Minn. Stat. § 609.1095, subd. 2 & 3, apply to violent offenders in general. In addition to those provisions, Minn. Stat. § 609.3455 contains a number of special sentencing provisions that apply to sex offenders in particular, including repeat sex offenders.

Reproduced on the following pages are excerpts from the MSGC's 2015 report entitled, "Sentencing Practices: Criminal Sexual Conduct Offenses Sentenced in 2014," which provide additional detail into the application of Minn. Stat. § 609.3455:

#### **Use of Life Sentences over Time**

In 2005, the Legislature established life sentences for certain offenders under Minn. Stat. § 609.3455. For some provisions of the law, the mandatory sentence is life without the possibility of release. For other provisions, the court must specify the minimum time to be served before the offender may be considered for release. Table 19 outlines when these and other mandatory-minimum sentencing provisions apply in criminal sexual conduct cases. Table 4 displays information about the 20 CSC offenders who have received life sentences since 2006. In 2014, one offender received a life sentence with the possibility of release.

**Table 4. Pronounced Life Sentences by Offense Type and Presumptive Sentence, 2006-2014**

Year	Offense	Severity	Criminal History Score	# True Prior Sex Offenses	Grid Duration (months)	Pronounced Minimum to Serve (months)	Minn. Stat. § 609.3455 Life-Sentence Subd.
2006	3 <sup>rd</sup> Degree-Force or Coercion	8	2	1	68	136	(Unknown)
2007	1 <sup>st</sup> Degree - Fear Great Bodily Harm	9	0	0	144	144	(Unknown)
2007	2 <sup>nd</sup> Degree - Dangerous Weapon	8	4	1	98	180	4(a)(1)
2007	2 <sup>nd</sup> Degree - Victim Under 13	6	8	1	60	360	4(a)(1)
2007	3 <sup>rd</sup> Degree - Victim 13-16	D	4	3	91	240	4(a)(1)
2008	1 <sup>st</sup> Degree - Fear Great Bodily Harm	9	5	2	146	No Release	2(a)(1)
2008	2 <sup>nd</sup> Degree - Victim Under 13	D	9	4	140	140	4(a)(1)
2008	1 <sup>st</sup> Degree-Multiple Acts	A	3	1	180	206	4(a)(1)
2009	1 <sup>st</sup> Degree-Force & Injury	A	1	0	156	No Release	2(a)(1)
2009	1 <sup>st</sup> Degree - Fear Great Bodily Harm	A	4	0	234	No Release	2(a)(1)
2010	1 <sup>st</sup> Degree - Fear Great Bodily Harm	A	6	2	360	No Release	2(a)(2)
2010	3 <sup>rd</sup> Degree-Force or Coercion	C	4	1	117	117	4(a)(2)(ii)
2011	2 <sup>nd</sup> Degree-Force & Injury	B	2	1	130	No Release	2(a)(2)
2011	1 <sup>st</sup> Degree – Pos. of Auth. & Victim 13-16	A	3	2	180	300	4(a)(1)
2011	1 <sup>st</sup> Degree – Pos. of Auth. & Victim 13-16	9	3	2	144	144	4(a)(1)
2011	1 <sup>st</sup> Degree – Pos. of Auth. & Victim 13-16	A	4	1	234	234	4(a)(2)(ii)
2011	1 <sup>st</sup> Degree-Force & Injury	A	5	1	306	404	3(a)
2012	1 <sup>st</sup> Degree-Force & Injury	A	0	0	144	144	3(a)
2012	3 <sup>rd</sup> Degree-Force or Coercion	C	7	2	180	180	4(a)(1)
2014	3 <sup>rd</sup> Degree-Victim Incapacitated	C	5	1	153	153	4(a)(3)(ii)

Table 19. Outline of Mandatory Minimums Applicable to Criminal Sexual Conduct Offenses, 2015\*

If the current offense is ...	and ...	and ...	then the court must sentence offender to ...	per Minn. Stat. § ...
Criminal Sexual Conduct (CSC) 1 <sup>st</sup> -4 <sup>th</sup> Degree or Criminal Sexual Predatory Conduct (CSPC)	the court is committing offender to prison for the current offense	<i>[no additional requirements]</i>	a sentence that provides for a 10-year conditional release term upon release from prison	<a href="#">609.3455</a> , subd. 6.
		before the current conviction, offender was convicted of a prior completed/attempted CSC 1 <sup>st</sup> -5 <sup>th</sup> Degree (or CSC 1 <sup>st</sup> -3 <sup>rd</sup> Degree, if current offense is CSC 4 <sup>th</sup> Degree) or CSPC, involving separate behavioral incident	a sentence that provides for lifetime conditional release term upon release from prison	609.3455, subd. 7(b) & (c); see also <a href="#">State v. Nodes</a> , 863 N.W.2d 77 (Minn. 2015) (at one hearing, one conviction was entered "before" other).
CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree	before the current offense date, offender was convicted of two prior felony violent crimes (see statutory list; includes CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree & Controlled Substance Crime 1 <sup>st</sup> & 2 <sup>nd</sup> Degree)	offender was convicted of the first prior felony violent crime before committing the second prior felony violent crime	executed sentence of at least the presumptive Guidelines duration	<a href="#">609.1095</a> , subd. 3; see also subd. 2 (aggravated departures for dangerous offenders).
CSC 2 <sup>nd</sup> Degree	the charge is not 2 <sup>nd</sup> Degree based solely on age, age & position, or age & relationship not involving multiple incidents	<i>[no additional requirements]</i>	executed sentence of at least 90 months, unless the court finds substantial & compelling reasons justifying a Guidelines departure	<a href="#">609.343</a> , subd. 2(b).
CSC 1 <sup>st</sup> Degree	<i>[no additional requirements]</i>	<i>[no additional requirements]</i>	executed sentence of at least 144 months, unless the court finds substantial & compelling reasons justifying a Guidelines departure	<a href="#">609.342</a> , subd. 2(b).
CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree or CSPC	before the current offense date, offender was sentenced for a previously completed or attempted CSC 1 <sup>st</sup> -5 <sup>th</sup> Degree or CSPC	the current conviction date is within 15 yrs. of previous conviction date	executed sentence of 3 years to statutory maximum, unless the court finds that a professional assessment indicates that offender is accepted by, and can respond to, approved long-term inpatient sex-offender treatment	609.3455, subd. 10.

If the current offense is ...	and ...	and ...	then the court must sentence offender to ...	per Minn. Stat. § ...
completed or attempted CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree or CSPC for which the court is imposing an executed sentence	the factfinder finds that offender is a danger to public safety (based on a Guidelines aggravating factor; planning or preparation; or previously completing or attempting one of the following adult crimes, or committing one of the following juvenile offenses: murder, manslaughter, Assault 1 <sup>st</sup> -3 <sup>rd</sup> or 5 <sup>th</sup> Degree, Domestic Assault, robbery, kidnapping, false imprisonment, witness tampering, Arson 1 <sup>st</sup> Degree, or Burglary 1 <sup>st</sup> Degree)	the factfinder finds that offender's criminal sexual behavior is so engrained that re-offense risk is great without intensive/long-term treatment/supervision beyond presumptive prison and supervised release	at least double the Guidelines sentence, but not more than the statutory maximum	609.3455, subd. 3a.
CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree or CSPC	before the current offense date, offender was convicted of two previously completed or attempted CSC 1 <sup>st</sup> -5 <sup>th</sup> Degree (or CSC 1 <sup>st</sup> -3 <sup>rd</sup> Degree, in the case of a current CSC 4 <sup>th</sup> Degree) or CSPC, and was sentenced for both offenses	offender was sentenced for the first previous sex offense before committing the second previous sex offense	life, with specified minimum term of imprisonment based on the Guidelines, and provide for lifetime conditional release	609.3455, subd. 4(a)(1), 4(b), 5, 7(a).
	before the current offense date, offender was sentenced for a previously completed or attempted CSC 1 <sup>st</sup> -5 <sup>th</sup> Degree (or CSC 1 <sup>st</sup> -3 <sup>rd</sup> Degree, in the case of a current CSC 4 <sup>th</sup> Degree) or CSPC	the factfinder finds a Guidelines aggravating factor (other than repeat sex offender) that would justify a durational departure		609.3455, subd. 4(a)(2)(i), 4(b), 5, 7(a).
		the previous sentence was an upward durational departure		609.3455, subd. 4(a)(2)(ii), 4(b), 5, 7(a).
	the previous sentence was under Minn. Stat. § 609.3455 or the old patterned/predatory sex offender law	609.3455, subd. 4(a)(2)(iii), 4(b), 5, 7(a).		



If the current offense is ...	and ...	and ...	then the court must sentence offender to ...	per Minn. Stat. § ...
CSC 1 <sup>st</sup> -4 <sup>th</sup> Degree or CSPC	before the current conviction (see <i>Nodes</i> ), offender was twice convicted of CSC 1 <sup>st</sup> -5 <sup>th</sup> Degree (or CSC 1 <sup>st</sup> -3 <sup>rd</sup> Degree, in the case of a current CSC 4 <sup>th</sup> Degree) or CSPC, provided each of the two prior offenses involved a separate behavioral incident from the current offense, and the three offenses involved at least three separate victims	the factfinder finds a Guidelines aggravating factor (other than repeat sex offender) that would justify a durational departure	life, with specified minimum term of imprisonment based on the Guidelines, and provide for lifetime conditional release	609.3455, subd. 4(a)(3)(i), 4(b), 5, 7(a).
		one of the prior sentences was an upward durational departure		609.3455, subd. 4(a)(3)(ii), 4(b), 5, 7(a).
		one of the prior sentences was under Minn. Stat. § 609.3455 or old patterned/predatory sex offender law		609.3455, subd. 4(a)(3)(iii), 4(b), 5, 7(a).
CSC 1 <sup>st</sup> or 2 <sup>nd</sup> Degree (other than charges based solely on age, age and position, or age and relationship not involving multiple incidents)	the factfinder finds a "heinous element" (torture, great bodily harm, mutilation, inhumane conditions, weapon used, multiple victims or perpetrators, removal of victim without safe release)	the heinous element is non-elemental (i.e., not already an element of the current offense)	life without the possibility of release	609.3455, subd. 3, 5, 7(a).
		before the current offense date, offender was sentenced for a previous CSC 1 <sup>st</sup> -3 <sup>rd</sup> Degree		609.3455, subd. 2(a)(2) & 2(b).
		the two heinous elements are supported by different underlying facts		609.3455, subd. 2(a)(1) & 2(b).

\* This table is intended to provide context and explanation for the operation of various sentencing provisions discussed in this report. It is not intended as a stand-alone practitioner's guide, as its terminology is not necessarily precise. Please refer to the note at the beginning of this report entitled, "About This Report."