Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January, 1993

MINNESOTA SENTENCING GUIDELINES COMMISSION
Meridian National Bank Building
205 Aurora Avenue
Suite 205
St. Paul, Minnesota 55103

Telephone: (612) 296-0144

Members

Julius E. Gernes, Chairman and County Attorney, Winona County
James Dege, Law Enforcement Representative, Steele County
Sandra Gardebring, Justice, Minnesota Supreme Court
Mary T. Howard, Citizen Representative
Susan Lange, Citizen Representative
Edward S. Wilson, District Court Judge, Second Judicial District
Orville Pung, Commissioner of Corrections
R. A. Randall, Judge, Court of Appeals
Stanley J. Suchta, Probation Officer Representative, Ramsey County
Jenny L. Walker, Chief Public Defender, Tenth Judicial District
T. Williams, Citizen Representative

Staff

Debra L. Dailey, Director
Susan D. Carter, Research Analysis Specialist
Anne Wall, Research Analyst
Jodi Ehlenz, Administrator

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EXECUTIVE SUMMARY

In 1992, the Minnesota Sentencing Guidelines Commission continued to address concerns and issues related to the sentencing of convicted felons. Much of the work throughout the year was in response to the 1992 legislative session. The Legislature again focused a great deal of attention on crime issues by creating new laws and provisions, by creating numerous task forces to address complex issues, and by directing the Commission to address several specific issues.

The Commission proposed severity level rankings for new and amended crimes passed by the 1992 Legislature. A public hearing was held in July, 1992 and the Commission adopted severity level rankings that went into effect August 1, 1992. These new and amended crimes and their adopted rankings are outlined in the report.

The Commission adopted other policy changes to: 1) clarify that the guidelines recommend prison for an offender convicted of a severity level VI drug offense who has any prior drug offense; 2) reflect in the guidelines the new mandatory sentences in law for certain repeat sex offenders; 3) further clarify the policy of the guidelines regarding mandatory minimum sentences for crimes involving dangerous weapons; 4) presume consecutive sentences for crimes committed by inmates serving time in a state correctional facility, as directed by the Legislature; 5) correct statutory cites; and 6) modify the Sentencing Guidelines Grid to clarify that certain offenses above the dispositional line carry a presumptive commitment to prison. In addition, the Commission adopted several changes to the Commentary to clarify existing policy.

The Commission adopted severity level rankings for several existing felony offenses that were only recently discovered. These rankings need to be reviewed by the 1993 Legislature and will go into effect August 1, 1993, absent any action by the Legislature to the contrary.

The 1992 Legislature directed the Commission to modify the criminal history policy for persons convicted of Criminal Vehicular Homicide or Injury; the limit has been removed on the number of misdemeanor points that can be included in the criminal history score due to DWI violations. Because the directive to the Commission is not effective until January 1, 1993, this policy change becomes effective August 1, 1993, along with next year's modifications.

The 1992 Legislature directed the Commission to study three issues. The first issue dealt with whether the current severity level ranking for First Degree Criminal Sexual Conduct should be changed. The Commission recommends the ranking remain at severity level VIII. This ranking is based on the minimum requirements that must be present for a conviction. Judges can give a lengthier sentence when the case involves aggravating factors and the Legislature has created lengthy mandatory sentences and other sentencing options for certain repeat and patterned sex offenders. The second issue was whether the presumptive sentence for Intentional Second Degree Murder was proportional to First Degree Murder. The current durations are based on a previous directive from the 1989 Legislature. The Commission closely examined how these crimes have been treated in the past and decided that these current durations are adequately proportional. The last issue was whether consecutive sentences for crimes against persons should be presumptive rather than permissive. The Commission recommends that they remain permissive. Situations involving multiple crimes against persons cover a wide range of circumstances and occur relatively infrequently. Judges and prosecutors can best determine which cases warrant consecutive sentences.

The 1990 Legislature directed the Commission to develop a model for fining offenders that was proportional to the seriousness of the offense and relative to the offender's ability to pay. The model is included in the report. There has not been an opportunity to pilot the model in a judicial district. The Commission strongly supports a pilot because they believe the means based fine would work better than the mandatory flat fines currently in law. The Commission also supports exploring how a means based fine system could be used to manage all financial sanctions (except restitution) that are to be collected from offenders.

A report summarizing 1991 sentencing practices will be available shortly. Other recent reports, including the *Report to the Legislature on Controlled Substance Offenses, February, 1992* are available upon request.

I. BACKGROUND INFORMATION

Minnesota adopted a sentencing guidelines system effective May 1, 1980. The guidelines were created to ensure uniform and determinate sentencing. The goals of the guidelines are: (1) To enhance public safety; (2) To promote uniformity in sentencing so that offenders who are convicted of similar types of crimes and have similar types of criminal records are similarly sentenced; (3) To establish proportionality in sentencing by emphasizing a "just deserts" philosophy. Offenders who are convicted of serious violent offenses, even with no prior record, those who have repeat violent records, and those who have more extensive nonviolent criminal records are recommended the most severe penalties under the guidelines; (4) To provide truth and certainty in sentencing; and (5) To enable the legislature to coordinate sentencing practices with correctional resources.

A sentencing guidelines system provides the legislature and the state with a structure for determining and maintaining rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines the goals and purposes of the sentencing system. Guidelines represent the general goals of the criminal justice system and indicate specific appropriate sentences based on the offender's conviction offense and criminal record.

Judges may depart from the presumptive guideline sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and either the prosecution or the defense may appeal the pronounced sentence. While the law provides for offenders to serve two-thirds of their sentence in prison and one-third of their sentence on supervised release if there are no disciplinary infractions, the sentence length is fixed. There is no mechanism for "early release due to crowding" that other states have been forced to accept because of disproportionate and overly lengthy sentences.

Judges pronounce sentences and are accountable for sentencing decisions. Prosecutors also play an important role in sentencing. The offense that a prosecutor charges directly affects the recommended guideline sentence if a conviction is obtained.

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. There are 11 members on the Commission who represent the criminal justice system and citizens of the State of Minnesota. The Commission meets monthly and all meetings are open to the public. Meeting minutes are available upon request.

A constant flow of information is gathered on sentencing practices and made available to the Commission, the legislature, and others interested in the system. The Commission modifies the guidelines, when needed, to take care of problem areas and legislative changes. Extensive changes were made in 1989 when the Commission and the Legislature addressed the problem of violent crime. In 1992, the Legislature made additional changes to law and sentencing policy to address public concerns.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1992

A. Ranking of New or Amended Crimes

1) The Commission adopted a proposal to add the following new crimes to the *Theft Related Offense List*:

Workers Compensation Fraud - 176.178
Theft by False Representation (new provisions) - 609.52, subd. 2 (d) & (e)
Assistance Transaction Card Fraud - 256.986, subd. 3

2) The Commission adopted a proposal to add the following amended crime to the *Misdemeanor and Gross Misdemeanor Offense List*:

Assault in the Fourth Degree - 609.2231, subd. 2, 4, 5, & 6

3) The Commission adopted the following severity level rankings for crimes amended or created by the 1992 Legislature:

Severity Level IX	Murder 2 without Intent (new provision) - 609.19 (3)
Severity Level VI	Controlled Substance Crimes in the Third Degree - 152.023

4) The Commission adopted a proposal that the following amended crimes remain ranked at their previous severity level rankings:

Controlled Substance Crimes in the 1st Degree - 152.021 (Severity Level VIII)
Controlled Substance Crimes in the 2nd Degree - 152.022 (Severity Level VII)
Controlled Substance Crimes in the 4th Degree - 152.024 (Severity Level IV)
Controlled Substance Crimes in the 5th Degree - 152.025 (Severity Level II)
Importing Controlled Substances Across State Borders - 152.261 (Severity Level VIII)
Assault 2nd Degree - 609.222 (including new provision) (Severity Level VI)
All Solicitation of Prostitution - 609.322 (various severity levels)
All Receiving Profit Derived from Prostitution - 609.323 (various severity levels)

The Legislature amended the criminal sexual conduct statutes to eliminate several definitional anomalies. The Commission did not believe these technical changes warranted any change in the severity level rankings of these offenses. However, the 1992 Legislature did direct the Commission to consider the appropriateness of the current ranking for Criminal Sexual Conduct in the First Degree. This issue is discussed in Section V. A., page 11 of the report.

5) The 1992 Legislature requested that the Commission consider modifying the severity level ranking for Criminal Vehicular Homicide, 609.21, subd. 1, clauses (3) & (4) and subd. 3, clauses (3) & (4). Because this directive does not go into effect until January 1, 1993, the Commission moved to table consideration regarding these severity level rankings until after that date.

B. The Minnesota Sentencing Guidelines Commission adopted the following modifications, effective August 1, 1992:

1) The Commission adopted the following modification to section **C. Presumptive Sentence:** to clarify that the guidelines presume a prison sentence for offenders currently convicted of a severity level VI drug crime and who have any prior felony drug conviction:

> . . . Similarly, when the current conviction offense is a severity level VI drug crime or sale of cocaine and there was a previous adjudication of guilt for a ~~severity level VI or above~~ felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

2) The Commission adopted a modification to section **E. Mandatory Sentences** to reflect changes made to law for certain repeat sex offenders:

> When an offender has been convicted of an offense with a mandatory minimum sentence of five years, the presumptive duration of the prison sentence should be 60 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer, First degree murder and certain sex offenders convicted under Minn. Stat. § 609.346, subd. 2a, which ~~has~~ have a mandatory life imprisonment sentence, ~~is~~ are excluded from offenses covered by the sentencing guidelines.
>
> When an offender has been sentenced according to Minn. Stat. § 609.196, Mandatory Penalty for Certain Murderers, or has been sentenced according to Minn. Stat. § 609.346, subd. 2a~~b~~, which provides for a mandatory sentence of 3~~7~~0 years for certain sex offenders; the statutory provision determines the presumptive sentence.

3) The Commission adopted a modification to section **E. Mandatory Sentences** to further clarify the policy of the guidelines regarding mandatory minimum sentences for crimes involving dangerous weapons:

> When an offender has been convicted of an offense with a mandatory minimum sentence under Minn. Stat. § 609.11, which would otherwise be a presumptive stayed sentence under the sentencing guidelines, the court on its own motion or on the motion of the prosecutor may sentence without regard to the mandatory minimum sentence. The presumptive disposition, however, is commitment to the commissioner. A stay of imposition or execution of sentence, while provided for under Minn. Stat. § 609.11, subd. 8, constitutes a departure from the presumptive sentence and the judge must provide written reasons which specify the substantial and compelling nature of the circumstances.

4) The 1992 Legislature directed the Commission to modify the consecutive policy to provide that an inmate of a state correctional facility who is convicted of committing a felony in prison receives a presumptive consecutive sentence to the sentence currently being served by the inmate and provide that the judge be able to depart from the presumptive consecutive sentence based on evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime. The Commission adopted the following modifications to section **F. Concurrent/Consecutive Sentences** and corresponding commentary.

> Consecutive sentences may be given only in the following cases: . . .
>
> 3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, unless the offender escaped from an executed prison sentence. ~~The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.~~ If the ~~executed~~ escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid. ~~If the executed escape sentence is to be served consecutively to other sentences, the presumptive duration shall be that indicated by the aggregation process set forth below.~~

When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, and the offender escaped from an executed prison sentence, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the new escape offense was committed. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.

It is also presumptive for the sentence for a felony conviction resulting from a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility, to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For persons given consecutive sentences . . .

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.

II.F.01. *Consecutive sentences are a more severe sanction because the intent of using them 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. Generally, t~~T~~he Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines. For felony convictions committed while an offender is serving an executed prison sentence or while on escape status from such a facility, it is presumptive to impose the sentence for the current offense consecutive to the sentence for which the inmate was confined at the time the new offense was committed. The guidelines create a presumption against the use of consecutive sentence in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.*

II.F.02. *. . . It is permissive for a sentence for an escape conviction from a nonexecuted prison sentence to be consecutive to any other current sentence and any prior sentence regardless of whether the other sentences are for crimes against the person. It is presumptive for a sentence for an escape conviction from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. If the sentencing judge determines that the sentence for an escape conviction is to be consecutive with sentences for other current felony convictions, the escape conviction should be sentenced last with the presumptive duration found at the zero criminal history column and the appropriate severity level. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.*

II.F.03. *For cases with a prior felony sentence, which has neither expired nor been discharged, and a single current conviction, and when the current conviction is sentenced consecutive to the prior, the presumptive duration for the current conviction is found at the zero criminal history column and the appropriate severity level, unless the consecutive sentence is presumptive. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.*

5) The Commission adopted the following changes to the Offense Severity Reference Table to correct the appropriate statutory cites:

Severity Level IV	Theft of Motor Vehicle - 609.52, subd. 2 (1) ~~3(3) (d) (vi)~~
Severity Level I	Assault 4 - 609.2231, subd. 1 & ~~2~~3

6) The Commission adopted a modified Sentencing Guidelines Grid that clarifies that certain offenses above the dispositional line carry a presumptive commitment to a state prison, including: Criminal Vehicular Homicide, Assault 2nd Degree and other applicable crimes involving a dangerous weapon, Controlled Substance Crimes in the Third Degree when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, and second or subsequent Criminal Sexual Conduct offenses. The modified grid also contains the effective date. The Grid is displayed below.

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Sale of Simulated Controlled Substance	I	12[1]	12[1]	12[1]	13	15	17	19 *18-20*
Theft Related Crimes ($2500 or less) Check Forgery ($200-$2500)	II	12[1]	12[1]	13	15	17	19	21 *20-22*
Theft Crimes ($2500 or less)	III	12[1]	13	15	17	19 *18-20*	22 *21-23*	25 *24-26*
Nonresidential Burglary Theft Crimes (Over $2500)	IV	12[1]	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Residential Burglary Simple Robbery	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree	VIII	86 *81-91*	98 *93-103*	110 *105-115*	122 *117-127*	134 *129-139*	146 *141-151*	158 *153-163*
Murder, 3rd Degree Murder, 2nd Degree (felony Murder)	IX	150 *144-156*	165 *159-171*	180 *174-186*	195 *189-201*	210 *204-216*	225 *219-231*	240 *234-246*
Murder, 2nd Degree (with intent)	X	306 *299-313*	326 *319-333*	346 *339-353*	366 *359-373*	386 *379-393*	406 *399-413*	426 *419-433*

Presumptive stayed sentence and at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include Criminal Vehicular Homicide, Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). **See sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.**

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law.

1 One year and one day

Effective: August 1, 1992

C. **The Commission adopted the following changes to commentary to clarify sentencing guidelines policy:**

1) Comment II.A.07 - clarifies the appropriate statutory cites for Theft of Motor Vehicle convictions.

There are two theft offenses involving a motor vehicle that are ranked individually on the Offense Severity Reference Table. For Theft of a Motor Vehicle, ranked at severity level IV, the offender must be convicted under the general theft statute, Minn. Stat. § 609.52, subd. 2 (1) and the offense must involve theft of a motor vehicle, in order for severity level IV to be the appropriate severity level ranking. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Minn. Stat. § 609.52, subd. 2 (17), the appropriate severity level is III, regardless of whether the sentencing provision that is cited is Minn. Stat. § 609.52, subd. 3 (3) (d) (vi).

2) Comment II.B.101. - clarifies the weight of prior attempted crimes for the purpose of criminal history and clarifies the method for determining the weight of prior drug crimes for purpose of criminal history.

II.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 before the current sentencing. Prior felony convictions for an attempt or conspiracy for which a felony sentence was stayed or imposed before the current sentencing are weighted the same as completed offenses. The felony point total is the sum of these weights. No partial points are given -- thus, a person 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.*

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.

The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III.

Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws

were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of drug involved in the conviction. For prior Minnesota controlled substance crimes committed before August 1, 1989 and all prior foreign controlled substance convictions, ~~T~~the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense.

III. 1992 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW

Several felony offenses were recently discovered that had not been considered for ranking by the Commission. These crimes are technically unranked at this time. The Commission adopted the following severity level rankings for these crimes. After review by the 1993 Legislature, these modifications will go into effect August 1, 1993:

Severity Level III

Tax Evasion Laws - 289A.63
Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd.2

Severity Level II

Gambling Regulations - 349.2127, subd. 1-6
Wildfire Arson - 609.5641, subd. 1
Bribery of Participant or Official in Contest - 609.825, subd. 2

Severity Level I

Motor Vehicle Taxes - 296.25, subd. 1(b)
Excise Tax on Alcoholic Beverages - 297C.13, subd. 1
Certification for Title on Watercraft - 86B.865, subd. 1
Criminal Penalties Regarding the Activities of Corporations - 300.60

Add to Unranked Offense List

Unlawful Transfer of Sounds; Sales - 325E.20

IV. OTHER MODIFICATIONS DIRECTED BY THE LEGISLATURE

The 1992 Legislature directed the Commission to modify section II.B.3 of the sentencing guidelines to provide that the criminal history score of any person convicted of violating section 609.21 shall include one-half point for each previous violation of section 169.121, 169.1211 or 169.129. Because this directive is not effective until January 1, 1993, this adopted policy becomes effective August 1, 1993, along with next year's modifications:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and ~~(excluding traffic offenses with the exception of DWI and aggravated DWI offenses, which are assigned two units each, when the current conviction offense is criminal vehicular operation)~~ for which a sentence was stayed or imposed before the current sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is criminal vehicular homicide or injury: previous violations of section 169.121, 169.1211 or 169.129 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI violations.

II.B.301. *The Commission established a measurement procedure . . . As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, the traffic offenses of driving while intoxicated and aggravated driving while intoxicated have particular relevance to the offense of criminal vehicular homicide or injury ~~operation~~. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169.121, 169.1211 or 169.129 ~~DWI and aggravated DWI~~ shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury ~~operation~~. These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.*

II.B.302. *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. . . Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines. The Commission believes that offenders*

whose current conviction is for criminal vehicular homicide or injury and who have prior violations under 169.121, 169.1211 or 169.129 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 violations.

V. LEGISLATIVE DIRECTIVE TO STUDY ISSUES

In the 1992 Omnibus Crime Bill, the Legislature directed the Commission to study three issues and report back by February, 1993.

A. Severity Level Ranking for Criminal Sexual Conduct in the First Degree

The 1992 Legislature directed the Commission to study "whether the crime of first degree criminal sexual conduct should be ranked, in whole or in part, in the next higher severity level of the sentencing guidelines grid."

Currently, all provisions of criminal sexual conduct in the first degree are ranked at severity level VIII. The only crimes ranked higher are murder in the second or third degree. **The Commission recommends that the offense of Criminal Sexual Conduct in the First Degree remain ranked at severity level VIII.**

The decision to rank First Degree Criminal Sexual Conduct at severity level VIII focuses on the minimum requirements that must be present in order to be convicted of this crime. Basically, the offense must involve a victim under 13 years of age or involve the use of force, weapons, or accomplices, and involve some personal injury. Personal injury is defined as any physical pain or injury or severe mental anguish or pregnancy. The Commission decided that first degree sexual assaults involving these minimum requirements should not be ranked the same as unintentional Murder in the Second Degree or Murder in the Third Degree (severity level IX).

If the case involved any aggravating factors, the judge could depart from the presumptive sentence. Judges do depart upward for factors such as substantial injury to the victim, invasion of the victim's zone of privacy, the presence of children during the offense, particular cruelty, and other egregious factors. Sentence lengths are substantially greater for aggravated cases. The average sentence in 1991 for an offender convicted of First Degree Criminal Sexual Conduct was 200 months for cases involving aggravated departures compared to 86 months for cases without a departure. In addition, the Legislature has created numerous special sentences for certain sex offenders including lengthy mandatory sentences for repeat offenders and enhanced sentences for "patterned sex offenders." The offender who would be sentenced according to the presumptive sentence found at severity level VIII (86 months in prison) would typically be the first time sex offender whose offense did not involve any aggravating factors.

There is a minority opinion on the Commission that those provisions in First Degree Criminal Sexual Conduct that involve fear of great bodily harm, use of weapons, and accomplices should be ranked higher than the current severity level VIII. These members do not necessarily believe that these provision should be ranked at the current severity level IX with unintentional Murder 2 and Murder 3 but they do believe the ranking of VIII is not appropriate with its current durations.

B. Durations for Second Degree Intentional Murder

Second, the Legislature directed the Commission to study, "whether the current presumptive sentence for the crime of second degree intentional murder is adequately proportional to the mandatory life imprisonment penalty provided for first degree murder."

Currently an offender convicted of First Degree Murder will serve a minimum of 30 years in prison, an offender (with no prior criminal record) convicted of Second Degree Intentional Murder will serve at least 17 years in prison. **The Commission believes that these durations are adequately proportional.**

The Commission examined the history of how these crimes were treated prior to the sentencing guidelines and over the last 12 years under sentencing guidelines. The original durations (minus good time) under the sentencing guidelines for second degree intentional murder were similar to the actual average time served under the parole system prior to sentencing guidelines. In 1983, there was a minor adjustment to the recommended durations for severity levels IX and X, zero criminal history.

In the summer of 1986, the County Attorney's Association presented a proposal to the Commission for increasing durations for second degree intentional murder. First degree murderers must receive a life sentence and therefore are not included in the guidelines. At that time, the minimum amount of time a first degree murderer had to serve before becoming eligible for parole was 17 years. Under the guidelines at that time, the second degree intentional murderer was recommended a sentence of 120 months and would serve 6 1/2 years if all good time was earned. Thus, the minimum term of imprisonment for Murder 1 was 2.7 times the minimum term of imprisonment for intentional Murder 2. The County Attorney's Association believed that this difference was disproportionate given the actual differences between the crime of Murder 1 and Murder 2.

The proposal to address this concern was to increase the durations at severity level X from 120 months at criminal history zero to 216 months, and increase durations by 20 months for every increment in the criminal history score. The Commission agreed with the County Attorney's Association and adopted the increased durations for severity level X and adopted proportional increases to attempted Murder 1. Under this modification, the minimum term of imprisonment for Murder 1 was 1.5 times the minimum term of imprisonment for intentional Murder 2. This modification became effective August 1, 1987.

It should be noted that some anomalies occurred under this policy. Some offenders pled guilty to Murder 1 to avoid the possibility of receiving a durational departure for a Murder 2 conviction. If the presumptive duration for Murder 2 was doubled due to aggravating factors, the minimum term of imprisonment would be 24 years for Murder 2 compared to 17 years for Murder 1.

As part of the 1989 Omnibus Crime Bill passed by the Legislature, the minimum term of imprisonment for Murder 1 was increased from 17 years to 30 years. In addition, the Legislature specifically directed the Commission to increase the presumptive duration for intentional 2nd Degree Murder to 306 months for an offender with a criminal history score of zero. The Commission was also directed to proportionally increase the presumptive sentences for higher criminal history scores, attempted first Degree Murder, unintentional second Degree Murder and third Degree Murder. The current grid represents the changes the Legislature directed the Commission make. The Legislature wanted the minimum term of imprisonment for intentional Murder 2 to be the same as what the minimum term of imprisonment had previously been for Murder 1. This modification became effective August 1, 1989.

With the current durations, the term of imprisonment for Murder 1 (30 years) is 1.8 times the minimum term of imprisonment for intentional Murder 2 (17 years).

The Commission believes these durations are proportional. In addition, the Commission was concerned that increasing durations for intentional Murder 2 would subsequently change the proportional relationship to unintentional Murder 2 ranked at severity level IX, attempted Murder 1, and every other lower severity level. Also, the statutory maximum sentence for Murder 2 is 40 years. The current presumptive sentence for intentional Murder 2 with a criminal history score of 6 or more is already 36 years.

C. Consecutive Sentences

Third, the Legislature directed the Commission to study "whether the sentencing guidelines should provide a presumption in favor of consecutive sentences for persons who are convicted of multiple crimes against a person in separate behavioral incidents."

The Commission recommends that consecutive sentences not be made presumptive, but rather that they remain permissive and within the court's discretion. Offenses involving multiple crimes against the person are not typical and the court needs to consider the circumstances on a case by case basis.

Currently, the sentencing guidelines provide for permissive consecutive sentences when the current convictions are for crimes against different persons and the guidelines presume prison for the most severe conviction offense. Under these circumstances, the guidelines call for judges to decide whether to pronounce concurrent or consecutive sentences. Either decision would not constitute a departure.

Pre-guidelines data from 1978 indicate that historically, consecutive sentences were used infrequently. In addition, consecutive sentences had little direct effect on the actual amount of time an offender would serve in prison because the parole board still had discretion to grant parole at any time.

When the guidelines were originally developed, proportionality concerns steered the Commission to limit consecutive sentences to offenses involving personal harm (crimes against the person). The Commission adopted discretionary use of consecutive sentencing, realizing that while such a policy would not necessarily enhance uniformity, a presumption of consecutive sentences would drastically change past practice and result in crowded prisons.

The Commission recommends that consecutive sentences remain permissive and within the court's discretion. It remains the case that presumptive consecutive sentences would increase the need for more prison space and the impact would contribute to the significant "tails" already associated with the 1989 Omnibus Crime Bill as well as other provisions in the 1992 Omnibus Crime Bill. Both crime bills contained mandated sentences that will affect prison populations dramatically for decades into the future. Presumptive consecutive sentences could increase the need for another 300-400 more prison beds over the next 30 years.

More importantly, the Commission believe that presumptive sentences are guidelines for what is appropriate for a typical case for each particular offense. Situations involving multiple crimes against persons cover a wide range of circumstances and occur relatively infrequently. There are only a few cases each year that are eligible for consecutive sentences (1% of the cases in 1990). They

could involve a father sexually abusing his daughters over a period of time, a serial rapist, an armed robber who robs a liquor store where there happen to be several customers in the store at the time of the robbery, an armed robber who commits a string of robberies over a one month period, or a murderer who intentionally seeks out and kills multiple persons.

Because circumstances surrounding these types of crimes vary a great deal and are not typical, judges and prosecutors can best determine which cases warrant consecutive sentences. Concurrent sentences would still result in additional time for offenders convicted of multiple current offenses because of their contribution to the offender's criminal history score.

VI. LEGISLATIVE DIRECTIVE TO DEVELOP A MODEL FOR MEANS BASED FINES

The 1990 Legislature directed the Commission to develop a model for fining offenders that was proportional to the seriousness of the offense and relative to the offender's ability to pay. The Legislature further directed the Commission to include in the model the option of using community work service in lieu of a fine. The directive was modified in 1991 to give the Commission more time to develop the model, to expand the model to include misdemeanor and gross misdemeanor crimes, and to allow for a pilot test of the model in an individual judicial district.

The Commission has completed the development of the model and it is presented below. There has not been an opportunity to pilot the model in a judicial district. The Commission would support a pilot test because they believe that a means based fine system has numerous advantages over the present policies and laws regarding fines.

The Commission strongly encourages the use of a means based system rather the mandatory flat fines currently required by law. The present law (effective August 1, 1992) requires a fine of a least 20% of the maximum fine provided by law. Statutory allowable fines commonly run from five to ten thousand dollars. Statutory maximum fines of thirty to fifty thousand dollars are not uncommon, and in some cases the maximum is one hundred thousand or more. The mandated 20% is more than most felony offenders can pay. Other strong priorities such as victim restitution also compete for limited dollars.

On the other hand, a means based system neither competes with other worthy goals nor is it initially an unrealistic amount. A means based fine is both proportional to the seriousness of the conviction offense and takes into account the realistic ability of the offender to pay. Rather than force trial judges to waive fines or impose fines they know will likely go uncollected, a means based fine system will provide judges the opportunity to fine offenders a proportionate amount. Thus offenders of lesser means, as well as those with greater means, will be held accountable.

The Commission also supports exploring how a means based fine system could be used to manage all financial sanctions (except restitution) that are to be collected from offenders. The model could be modified to include all surcharges and other fees in one "means based financial sanction" system. Monies collected from offenders could be proportionately disbursed to the same sources that would otherwise have received separate surcharges and fees. This type of system would be easier to administer and would allow all financial sanctions to be means based.

The Commission believes that this model provides jurisdictions with a basic system for implementing a means based fine system. Individual jurisdictions may wish to adjust and refine the model to meet their needs and clientele.

MINNESOTA SENTENCING GUIDELINES COMMISSION

MODEL FOR MEANS BASED FINES
December, 1992

I. INTRODUCTION

A means based fine is a method of fining that takes into account the seriousness of the offense and the offender's ability to pay. The model described below is not intended to prescribe fines in lieu of jail or any other intermediate sanction because the model does not recommend when to fine but provides a mechanism for determining how much to fine.

Punish the Offender and Restore the Community

The means based fine model provides judges with an intermediate sanction. A fine can be pronounced as the sole intermediate sanction as it serves the sentencing purpose of "retribution" or **punishment**. While fines are punitive they are also less expensive than incarceration. Fines are **restorative**. Offenders pay something back to the community with a fine as opposed to other sanctions such as jail that further deplete community resources.

Proportional, Equitable and Collectable

The model scales the fine amounts to the seriousness of the conviction offense. Offenders who are convicted of more serious crimes should receive greater fines. The model further adjusts the amount of the fine to the individual's ability to pay. This combination of proportionality and consideration of an offender's financial means results in a fining system that is more equitable. A means based fine places more equal burden on offenders who have been convicted of similar crimes regardless of financial status. In addition, fines that are relative to a person's ability to pay are also more collectable. A method for determining the comparable amount of community work in lieu of the means based fine is also provided in the model.

Relatively Simple to Determine

Fine units are prescribed for offenses according to a seriousness scale. Ability to pay is determined by estimating an offender's net daily income. The net daily income is discounted to take into account certain financial hardships such as child support responsibilities and poverty level status. The discounted daily income figure is then multiplied by the number of fine units associated with the conviction offense to calculate the "means based fine" that would be appropriate for each offender. A table with the calculated discounted figures is provided for easier application.

Judicial Discretion

The sentencing judge is in the best position to determine whether a fine is an appropriate sanction to impose on any given offender. The model does not prescribe when a judge should fine. While a judge has the discretion to pronounce a fine for offenders who are sentenced to prison, the model does not extend into severity levels VII through X. Under sentencing guidelines, the appropriate sanction is prison for these offenders and prison serves the sentencing purpose of punishment. Cases are considered unique when the sentencing judge chooses to depart from the presumptive prison sentence and not send an offender to prison. If in these dispositional departure cases the judge decides to fine, the court could still use the means based fine model to determine the appropriate fine amount.

II. DETERMINING THE SERIOUSNESS OF THE CONVICTION OFFENSE

A fine serves the sentencing purpose of punishment or retribution. In order for the punishment to be fair and equitable, the fine should be proportional to the seriousness of the conviction offense. Offenders who are convicted of more serious crimes should receive greater fines. (Furthermore, in a means based fine system the fine is relative to the offender's ability to pay.)

To determine seriousness levels for felony offenses, the model uses the offense severity rankings contained in the Minnesota Sentencing Guidelines. The seriousness levels for gross misdemeanors and misdemeanors are determined by the type of harm involved in each crime. The model considers four basic types of harm, from most serious to least serious: personal harm, public endangerment, property loss, and violation of public trust or public disorder. The level of seriousness also takes into account whether the crime was a misdemeanor or gross misdemeanor.

Seriousness Levels or Fine Levels

- There is a total of nine Fine Levels.

- Fine Levels are identified by an alpha character to avoid confusion with Sentencing Guidelines Severity Levels; i.e., A (least serious) through J. There is no level I to avoid confusion with the number one.

- Fine Levels for felony offenses are determined by their respective severity levels in the sentencing guidelines.

- Fine Levels for misdemeanor and gross misdemeanor convictions are determined by the Type of Harm and the Level of Crime. These fine levels provide a just deserts scheme for fining offenders. There is an emphasis on greater punishment for crimes involving personal harm or public endangerment. A lesser degree of punishment is recommended for crimes involving property loss or public disorder.

- Only common misdemeanors and gross misdemeanors are specifically noted within each Fine Level. For those crimes not specifically included in the model, the appropriate Fine Level should be determined by the judge, based on the type of harm (personal, property loss, etc.) and the level of the crime (misdemeanor or gross misdemeanor). The model does not include traffic (other than DWIs) and ordinance violations.

- A range of fine units is specified for each level.

Criminal History Consideration

- Generally, the model does not consider criminal history in determining the fine units. Information on the prior criminal record of offenders convicted of misdemeanors is difficult to get. To include the computation of a criminal history score would introduce a great deal of complexity and additional effort in the application of the model.

- To some extent, criminal history is already taken into account by the seriousness of the conviction offense. For example, a second violation of DWI would increase the Fine Level from C to D.

- A judge could choose to use the upper range of fine units to address criminal history concerns.

- Criminal history plays a more important role in determining which of the other types of intermediate sanctions should be imposed by the sentencing court such as jail and the level of probation. For example, incapacitation may be a more important sentencing goal for an offender who repeatedly commits domestic abuse. An appropriate period of local incarceration or another physically restrictive sanction might better satisfy sentencing goals. Criminal history also is important in the decision of whether to imprison felony offenders.

FINE LEVELS AND UNIT RANGES

Fine Level		Unit Ranges
A	**Misd - Property Loss Offenses:**	5-10
	Issuance of Dishonored Checks - 609.535, Subd. 2a (a) (2) Theft - 609.52, Subd. 3 (5) Criminal Damage to Property 4th Deg. - 609.595, Subd. 3 All other Misdemeanors involving Property Loss	
	Misd - Violation of Public Trust or Public Disorder:	
	Obstructing Legal Process, Arrest . . . - 609.50, Subd. 2(3) Prohibiting Giving Peace Officer False Name - 609.506, Subd. 1 Accidents (Leaving the Scene, No Injury) - 169.09, Subd. 14 (d) Trespass - 609.605, Subd. 1 Disorderly Conduct - 609.72 All other Misdemeanors involving a violation of Public Trust or Public Disorder	
B	**Gross Misd - Violation of Public Trust or Public Disorder:**	10-15
	Trespass - 609.605, Subd. 2 & 3 Disorderly House - 609.33, Subd. 2 All other Gross Misdemeanors involving a violation of Public Trust or Public Disorder	
C	**Gross Misd - Property Loss Offenses:**	15-20
	Issuance of Dishonored Checks - 609.535, Subd. 2a (a) (1) Theft - 609.52, Subd. 3 (4) Check Forgery - 609.631, Subd. 4 (4) Criminal Damage to Property 3rd Deg. - 609.595, Subd. 2 All other Gross Misdemeanors involving Property Loss	
	Misd - Public Endangerment Offenses:	
	DWI - 169.121, Subd. 3 (b) Reckless or Careless Driving - 169.13 Prostitution - 609.324, Subd. 3 All other Misdemeanors involving Public Endangerment	

D	**Gross Misd - Public Endangerment Offenses:**	**20-25**
	DWI - 169.121, Subd. 3 (c) (1), (2), (3) Fleeing a Peace Officer in Motor Vehicle - 609.487, Subd. 3 Prostitution - 609.324, Subd. 1a, 2, 3 All other Gross Misdemeanors involving Public Endangerment	
	Misd - Personal Harm Offenses: Assault in the Fifth Degree - 609.224, Subd. 1 Violation of Order for Protection - 518B.01, Subd. 14 Harassment; Restraining Order - 609.748 All other Misdemeanors involving Personal Harm	
E	**Felony - All Severity Level I and II Offenses**	**25-30**
	Gross Misd - Personal Harm Offenses:	
	Assault in the Fourth Degree - 609.2231, Subd. 2, 4, & 5 Assault in the Fifth Degree - 609.224, Subd. 2 Criminal Sexual Conduct 5th Degree - 609.3451 All other Gross Misdemeanors involving Personal Harm	
F	**Felony - All Severity Level III Offenses**	**30-35**
G	**Felony - All Severity Level IV Offenses**	**35-40**
H	**Felony - All Severity Level V Offenses**	**40-45**
J	**Felony - All Severity Level VI Offenses**	**45-50**

III. MEASUREMENT OF FINANCIAL RESOURCES

Ability to pay is determined by estimating an offender's daily income. The model is intended to provide a straightforward and relatively uncomplicated method of calculating daily income. It focuses on a person's net income which is discounted to take into account living expenses, dependents, and poverty status. This simplistic approach will not always represent a true picture of the offender's financial status. Wealth, family income, financial gain from criminal activity, and debt are not usually used to determine ability to pay, but in unique situations the judge may decide these factors are important to consider.

Net Income

- Net income is a more appropriate measure of income than gross income because it represents actual spendable dollars. This information could be obtained from a paycheck stub or tax return. The definition of net income is basically the same as that defined in state laws governing child support payments, Minn. Stat. § 518.551, subd. 5.

  Net Income = Total monthly income less:

  Federal Income Tax
  State Income Tax
  Social Security Deductions
  Reasonable Pension Deductions
  Union Dues
  Cost of Dependent Health Insurance Coverage
  Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses
  Overtime Pay

Other Financial Resources

- For purposes of determining the net daily income, the use of the following would be up to the court:

  Wealth (Assets)
  Family income or wealth
  Financial gain from criminal activity

  The above measures of financial resources are difficult to access and verify and it would be a substantial burden on the criminal justice system to routinely attempt to collect this information. However, the court may wish to take these items into account when they are critical in determining a particular individual's financial resources. (Example: a sophisticated, white collar offender who has acquired major assets through criminal activity.)

Debt

- Although debt is not routinely considered when determining the net daily income, the judge may decide it is important to include in unique situations. For example, a judge may want to consider debt caused by medical expenses. Debt is also important in determining the duration of the payment schedule for an individual offender and when considering community work as an alternative to the fine.

Discounts

- The net daily income is discounted to take into account basic living expenses. This discount is greater for those offenders whose income places them below the poverty level.

- The judge may consider not including the discount for basic living expenses when the offender's basic living expenses are paid by someone else, such as parents.

- The net daily income is also discounted to take into account support for dependents. The offender receives a dependent discount for self, spouse and each child if there is some evidence of support. The other parent may be interviewed to obtain information on whether the offender provides child support.

- A spouse is considered a dependent unless the spouse is employed.

Community Work

- Community work is always an alternative for all or any part of the means based fine. Community work can be exchanged at a rate of $5.00 per hour. To calculate the number of community work hours, divide the total means based fine or any part of the fine by five.

Unemployed Offenders

- Offenders who are unemployed are placed at the minimum level of a gross hourly rate of $5.00. This $5.00 per hour minimum can help determine a comparable amount of community work.

Payment Schedule

- The means based model does not address the collection of fines. It is a goal of the model to introduce a method of determining how much to fine that will result in fines that can realistically be paid by offenders. The payment schedule for collecting the means based fine needs to be determined by the court.

III. VALUATION TABLE

- A simple valuation table is provided that charts the value of the discounted daily income for each amount of net daily income. The chart contains the calculated discounts for dependents and living expenses so that practitioners do not have to actually calculate these figures. The net daily income is discounted as follows:

    - discount of 1/3 for basic living expenses
      or
      discount of 1/2 for those with poverty level incomes
    - discount of 15% for offender's self-support
    - discount of 15% for 1st dependent (spouse if spouse is not employed)
    - discount of 15% for 2nd dependent
    - discount of 10% for 3rd dependent
    - discount of 10% for 4th dependent
    - discount of 5% for each additional dependent

  Note: These discounts are multiplied together and there is always a remaining net daily income. Even with a large number of dependents, the net daily income would never equal zero.

Example: According to his pay stub, John Smith has a net annual income of $22,000 per year. He lives with his wife and their two children. His wife does not work outside the home.

Net Daily Income ($22,000 per year ÷ 365 days = $60.27)	$60.00
Discounted Net Daily Income	$22.20

Using the Discount Chart to Calculate Net Daily Income

It is not necessary to perform the calculation below; the discounted net daily income for any defendant can be determined by looking up the net daily income and number of dependents (including the defendant) on the Discount Chart.

In using net daily income to calculate the discounted net daily income to look up the value on the chart, only whole dollars are used; e.g., if net daily income is $60.27, the 27¢ are dropped and a value of $60 is used.

Manual Calculation of Net Daily Income

The $60 net daily income is multiplied by:

.85 (to account for 15% discount for self-support)
.85 (to account for 15% discount for support of spouse)
.85 (to account for 15% discount for the first child)
.90 (to account for 10% discount for the second child)
.67 (to account for general discount - would be .5 if below poverty level)

The discounted net daily income for this defendant is calculated using the following formula: $60 x .85 x .85 x .85 x .90 x .67 = $22.22

60 x .85 = 51
51 x .85 = 43.35
43.35 x .85 =
36.85
36.85 x .90 =
33.16
33.16 x .67 =
22.22

Sample Means Based Fine Application:

	Calculation				Fine Amount
Fine Level = 10 units and Discounted Net Daily Income = $22.20					
	10	x	$22.20	=	$ 222.00
Fine Level = 30 units and Discounted Net Daily Income = $22.20					
	30	x	$22.20	=	$ 666.00
Fine Level = 50 units and Discounted Net Daily Income = $22.20					
	50	x	$22.20	=	$1,110.00

- For ease of administration, fines could be pronounced in whole dollars, any cents specified in the recommended means based fine could be dropped.

DISCOUNT CHART

DOLLAR VALUE OF DISCOUNTED NET DAILY INCOME BASED ON NET DAILY INCOME AND NUMBER OF DEPENDENTS

Net Daily Income ($)	Number of Dependents (Including Self)						
	1	2	3	4	5	6	7
5	2.10	1.80	1.50	1.40	1.20	1.20	1.10
6	2.60	2.20	1.80	1.70	1.50	1.40	1.40
7	3.00	2.50	2.20	1.90	1.70	1.70	1.60
8	3.40	2.90	2.50	2.20	2.00	1.90	1.80
9	3.80	3.30	2.80	2.50	2.20	2.10	2.00
10	4.30	3.60	3.10	2.80	2.50	2.40	2.20
11	4.70	4.00	3.40	3.00	2.70	2.60	2.50
12	5.10	4.30	3.70	3.30	3.00	2.80	2.70
13	5.50	4.70	4.00	3.60	3.20	3.10	2.90
14	6.00	5.10	4.30	3.90	3.50	3.30	3.10
15	6.40	5.40	4.60	4.20	3.70	3.50	3.40
16	6.80	5.80	4.90	4.40	4.00	3.80	3.60
17	7.20	6.10	5.20	4.70	4.20	4.00	3.80
18	7.70	6.50	5.50	5.00	4.50	4.30	4.00
19	10.80	6.90	5.80	5.30	4.70	4.50	4.30
20	11.40	7.20	6.10	5.50	5.00	4.70	4.50
21	12.00	7.60	6.50	5.80	5.20	5.00	4.70
22	12.50	8.00	6.80	6.10	5.50	5.20	4.90
23	13.10	8.30	7.10	6.40	5.70	5.40	5.20
24	13.70	8.70	7.40	6.60	6.00	5.70	5.40
25	14.20	9.00	7.70	6.90	6.20	5.90	5.60
26	14.80	12.60	8.00	7.20	6.50	6.10	5.80
27	15.40	13.10	8.30	7.50	6.70	6.40	6.10
28	16.00	13.60	8.60	7.70	7.00	6.60	6.30
29	16.50	14.00	8.90	8.00	7.20	6.90	6.50
30	17.10	14.50	9.20	8.30	7.50	7.10	6.70

NOTE: **Cases above and to the right of the solid black line fall below the 1992 federal poverty guidelines.**

DOLLAR VALUE OF ONE-DAY FINE UNIT
(continued)

Net Daily Income ($)	Number of Dependents (Including Self)						
	1	2	3	4	5	6	7
31	17.70	15.00	9.50	8.60	7.70	7.30	7.00
32	18.20	15.50	13.20	8.80	8.00	7.60	7.20
33	18.80	16.00	13.60	9.10	8.20	7.80	7.40
34	19.40	16.50	14.00	9.40	8.50	8.00	7.60
35	19.90	16.90	14.40	9.70	8.70	8.30	7.90
36	20.50	17.40	14.80	10.00	9.00	8.50	8.10
37	21.10	17.90	15.20	10.20	9.20	8.70	8.30
38	21.60	18.40	15.60	10.50	9.50	9.00	8.50
39	22.20	18.90	16.10	14.40	9.70	9.20	8.80
40	22.80	19.40	16.50	14.80	10.00	9.50	9.00
41	23.40	19.90	16.80	15.20	10.20	9.70	9.20
42	23.90	20.30	17.30	15.60	10.50	9.90	9.40
43	24.50	20.80	17.70	15.90	10.70	10.20	9.70
44	25.10	21.30	18.10	16.30	10.90	10.40	9.90
45	25.60	21.80	18.50	16.70	15.00	10.60	10.10
46	26.20	22.30	18.90	17.00	15.30	10.90	10.30
47	26.80	22.80	19.30	17.40	15.70	11.10	10.60
48	27.30	23.20	19.80	17.80	16.00	11.30	10.80
49	27.90	23.70	20.20	18.20	16.30	11.60	11.00
50	28.50	24.20	20.60	18.50	16.70	11.80	11.20
51	29.00	24.70	21.00	18.90	17.00	12.00	11.50
52	29.60	25.20	21.40	19.30	17.30	16.50	11.70
53	30.20	25.70	21.80	19.60	17.70	16.80	11.90
54	30.80	26.10	22.20	20.00	18.00	17.10	12.10
55	31.30	26.60	22.60	20.40	18.30	17.40	12.40
56	31.90	27.10	23.00	20.70	18.70	17.70	12.60
57	32.50	27.60	23.50	21.10	19.00	18.10	12.80
58	33.00	28.10	23.90	21.50	19.30	18.40	17.50

NOTE: **Cases above and to the right of the solid black line fall below the 1992 federal poverty guidelines.**

DOLLAR VALUE OF ONE-DAY FINE UNIT
(continued)

Net Daily Income ($)	Number of Dependents (Including Self)						
	1	2	3	4	5	6	7
59	33.60	28.60	24.30	21.90	19.70	18.70	17.80
60	34.20	29.00	24.70	22.20	20.00	19.00	18.10
61	34.70	29.50	25.10	22.60	20.30	19.30	18.40
62	35.30	30.00	25.50	23.00	20.70	19.60	18.70
63	35.90	30.50	25.90	23.30	21.00	20.00	19.00
64	36.50	31.00	26.30	23.70	21.30	20.30	19.30
65	37.00	31.50	26.80	24.10	21.70	20.60	19.60
66	37.60	32.00	27.20	24.40	22.00	20.90	19.90
67	38.20	32.40	27.60	24.80	22.30	21.20	20.20
68	38.70	32.90	28.00	25.20	22.70	21.50	20.50
69	39.30	33.40	28.40	25.60	23.00	21.90	20.80
70	39.90	33.90	28.80	25.90	23.30	22.20	21.10
71	40.40	34.40	29.20	26.30	23.70	22.50	21.40
72	41.00	34.90	29.60	26.70	24.00	22.80	21.70
73	41.60	35.30	30.00	27.00	24.30	23.10	22.00
74	42.10	35.80	30.50	27.40	24.70	23.40	22.30
75	42.70	36.30	30.90	27.80	25.00	23.80	22.60
76	43.30	36.80	31.30	28.10	25.30	24.10	22.90
77	43.90	37.30	31.70	28.50	25.70	24.40	23.20
78	44.40	37.80	32.10	28.90	26.00	24.70	23.50
79	45.00	38.20	32.50	29.30	26.30	25.00	23.80
80	45.60	38.70	32.90	29.60	26.70	25.30	24.10
81	46.10	39.20	33.30	30.00	27.00	25.70	24.40
82	46.70	39.70	33.70	30.40	27.30	26.00	24.70
83	47.30	40.20	34.20	30.70	27.70	26.30	25.00
84	47.90	40.70	34.60	31.10	28.00	26.60	25.30
85	48.40	41.20	35.00	31.50	28.30	26.90	25.60

Table continues . . .

For implementation purposes, this table continues through a net daily income of $300.

SETTING THE VALUE OF MEANS BASED FINES
EXAMPLES

Example #1:

According to his pay stub, Jack Smith has a net annual income of $48,000 per year. He lives with his wife and their two children. His wife does not work outside the home.

Net Daily Income ($48,000 per year ÷ 365 days = $131.51)	$131.00
Discounted Net Daily Income	$ 48.50

Using the Discount Chart to Calculate Net Daily Income

It is not necessary to perform the calculation below; the discounted net daily income for any defendant can be determined by looking up the net daily income and number of dependents (including the defendant) on the discount chart.

In using net daily income to calculate the discounted net daily income to look up the discounted value on the chart, only whole dollars are used; e.g., if net daily income is $131.51, the 51¢ are dropped and a value of $131 is used.

Manual Calculation of Net Daily Income

The $131 net daily income is multiplied by:

.85 (to account for 15% discount for self-support)
.85 (to account for 15% discount for support of spouse)
.85 (to account for 15% discount for the first child)
.90 (to account for 10% discount for the second child)
.67 (to account for general discount - would be .5 if below poverty level)

The discounted net daily income for this defendant is calculated using the following formula: $131 x .85 x .85 x .85 x .90 x .67 = $48.51

131 x .85 = 111.35
111.35 x .85 =94.65
94.65 x .85 = 80.45
80.45 x .90 = 72.40
72.40 x .67 = 48.51

Sample Means Based Fine Application:

Calculation	Fine Amount
10 fine units (10 x $48.50 = $ 485.00)	$ 485.00
15 fine units (15 x $48.50 = $ 727.50)	$ 727.00
30 fine units (30 x $48.50 = $ 1,455.00)	$ 1,445.00
50 fine units (50 x $48.50 = $ 2,425.00)	$ 2,425.00

(For ease of administration, fines should be pronounced in whole dollars, any cents specified in the recommended fine should be dropped. For example, if the total recommended fine amount is calculated to be $727.50, the pronounced fine should be $727.)

Setting the Value of Means Based Fines
Examples (continued)

Example #2:

Tom Smith has a net annual income of $25,000 per year. He lives with his wife and two young children. His wife works outside the home, earning $25,000 per year (net). Because his wife earns enough to support herself, she is not included as a dependent.

Net Daily Income ($25,000 per year ÷ 365 days = $68.49)	$68.00
Discounted Net Daily Income	$28.00

Using the Discount Chart to Calculate Net Daily Income

It is not necessary to perform the calculation below; the discounted net daily income for any defendant can be determined by looking up the net daily income and number of dependents (including the defendant) on the discount chart.

In using net daily income to calculate the discounted net daily income to look up the discounted value on the chart, only whole dollars are used; e.g., if net daily income is $68.49, the 49¢ are dropped and a value of $68 is used.

Manual Calculation of Net Daily Income

The $68 net daily income is multiplied by:

.85 (to account for 15% discount for self-support)
.85 (to account for 15% discount for the first child)
.85 (to account for 15% discount for the second child)
.67 (to account for general discount - would be .5 if below poverty level)

The discounted net daily income for this defendant is calculated using the following formula: $68 x .85 x .85 x .85 x .67 = $27.98.

68 x .85 = 57.8
57.8 x .85 = 49.13
49.13 x .85 =41.76
41.76 x .67 =27.98

Sample Means Based Fine Application:

Calculation	Fine Amount
10 fine units (10 x $28.00 = $ 280.00)	$ 280.00
30 fine units (30 x $28.00 = $ 840.00)	$ 840.00
50 fine units (50 x $28.00 = $1,400.00)	$ 1,400.00

Setting the Value of Means Based Fines
Examples (continued)

Example #3:

John Doe earns $7 an hour (gross). According to his pay stub, he nets $225 per week. He lives alone and has no dependents.

Net Daily Income ($225 ÷ 7 days = $32.14)	$32.00
Discounted Net Daily Income	$18.20

Using the Discount Chart to Calculate Net Daily Income

It is not necessary to perform the calculation below; the discounted net daily income for any defendant can be determined by looking up the net daily income and number of dependents (including the defendant) on the discount chart.

In using net daily income to calculate the discounted net daily income to look up the discounted value on the chart, only whole dollars are used; e.g., if net daily income is $32.14, the 14¢ are dropped and a value of $32 is used.

Manual Calculation of Net Daily Income

The $32 net daily income is multiplied by:

.85 (to account for 15% discount for self-support)
.67 (to account for general discount - would be .5 if below poverty level)

The discounted net daily income for this defendant is calculated using the following formula: $32 x .85 x .67 = $18.22

32 x .85 = 27.2
27.2 x .67 = 18.22

Sample Means Based Fine Application:

Calculation	Fine Amount
10 fine units (10 x $18.20 = $ 182.00)	$ 182.00
30 fine units (30 x $18.20 = $ 546.00)	$ 546.00
50 fine units (50 x $18.20 = $ 910.00)	$ 910.00

Setting the Value of Means Based Fines
Examples (continued)

Example #4:

Jane Doe is single with three children (ages 3, 5 and 8). She is not employed outside the home. She receives $630 a month in AFDC.

Net Daily Income ($630 ÷ 30 days = $21.00)	$27.00
Discounted Net Daily Income	$ 5.80

Using the Discount Chart to Calculate Net Daily Income

It is not necessary to perform the calculation below; the discounted net daily income for any defendant can be determined by looking up the net daily income and number of dependents (including the defendant) on the discount chart.

In using net daily income to calculate the discounted net daily income to look up the discounted value on the chart, only whole dollars are used.

Manual Calculation of Net Daily Income

The $21 net daily income is multiplied by:

.85 (to account for 15% discount for self-support)
.85 (to account for 15% discount for the first child)
.85 (to account for 15% discount for the second child)
.90 (to account for 10% discount for the third child)
.5 (to account for general discount - would be .67, except income is below poverty level)

The discounted net daily income for this defendant is calculated using the following formula: $21 x .85 x .85 x .85 x .90 x .50 = $5.80

21 x .85 = 17.85
17.85 x .85 =15.17
15.17 x .85 =12.89
12.89 x .90 =11.60
11.60 x .50 = 5.80

Sample Means Based Fine Application:

Calculation	Fine Amount
10 fine units (10 * $5.80 = $ 58.00)	$ 58.00
30 fine units (30 * $5.80 = $ 174.00)	$ 174.00
50 fine units (50 * $5.80 = $ 290.00)	$ 290.00

TOTAL FINES: EXAMPLES
BASED ON RECOMMENDED UNITS

Rec. Fine Units	Description of Examples			
	#1: Defendant, wife, two children. Income: $48,000/yr Discounted Net Daily Inc.: $48.50	#2: Defendant and 2 children (wife is employed) Income: $25,000/yr Discounted Net Daily Inc.: $28.00	#3: Defendant lives alone/no dependents Income: $225/wk Discounted Net Daily Inc.: $18.20	#4: Defendant and 3 children Income: $630/mo Discounted Net Daily Inc.: $5.80
1	48.50	28.00	18.20	5.80
2	97.00	56.00	36.40	11.60
3	145.50	84.00	54.60	17.40
4	194.00	112.00	72.80	23.20
5	242.50	140.00	91.00	29.00
6	291.00	168.00	109.20	34.80
7	339.50	196.00	127.40	40.60
8	388.00	224.00	145.60	46.40
9	436.50	252.00	163.80	52.20
10	485.00	280.00	182.00	58.00
11	533.50	308.00	200.20	63.80
12	582.00	336.00	218.40	69.60
13	630.50	364.00	236.60	75.40
14	679.00	392.00	254.80	81.20
15	727.50	420.00	273.00	87.00
16	776.00	448.00	291.20	92.80
17	824.50	476.00	309.40	98.60
18	873.00	504.00	327.60	104.40
19	921.50	532.00	345.80	110.20
20	970.00	560.00	364.00	116.00
21	1,018.50	588.00	382.20	121.80
22	1,067.00	616.00	400.40	127.60
23	1,115.50	644.00	418.60	133.40
24	1,164.00	672.00	436.80	139.20
25	1,212.50	700.00	455.00	145.00
26	1,261.00	728.00	473.20	150.80

TOTAL FINES: EXAMPLES
BASED ON RECOMMENDED UNITS

Rec. Fine Units	Description of Examples			
	#1: Defendant, wife, two children. Income: $48,000/yr Discounted Net Daily Inc.: $48.50	#2: Defendant and 2 children (wife is employed) Income: $25,000/yr Discounted Net Daily Inc.: $28.00	#3: Defendant lives alone/no dependents Income: $225/wk Discounted Net Daily Inc.: $18.20	#4: Defendant and 3 children Income: $630/mo Discounted Net Daily Inc.: $5.80
27	1,309.50	756.00	491.40	156.60
28	1,358.00	784.00	509.60	162.40
29	1,406.50	812.00	527.80	168.20
30	1,455.00	840.00	546.00	174.00
31	1,503.50	868.00	564.20	179.80
32	1,552.00	896.00	582.40	185.60
33	1,600.50	924.00	600.60	191.40
34	1,649.00	952.00	618.80	197.20
35	1,697.50	980.00	637.00	203.00
36	1,746.00	1,008.00	655.20	208.80
37	1,794.50	1,036.00	673.40	214.60
38	1,843.00	1,064.00	691.60	220.40
39	1,891.50	1,092.00	709.80	226.20
40	1,940.00	1,120.00	728.00	232.00
41	1,988.50	1,148.00	746.20	237.80
42	2,037.00	1,176.00	764.40	243.60
43	2,085.50	1,204.00	782.60	249.40
44	2,134.00	1,232.00	800.80	255.20
45	2,182.50	1,260.00	819.00	261.00
46	2,231.00	1,288.00	837.20	266.80
47	2,279.50	1,316.00	855.40	272.60
48	2,328.00	1,344.00	873.60	278.40
49	2,376.50	1,372.00	891.80	284.20
50	2,425.00	1,400.00	910.00	290.00

TOTAL FINES: EXAMPLES FOR SPECIFIC FINE LEVELS BASED ON RECOMMENDED FINE UNIT RANGES

Fine Level	Recommended Fine Units	Description of Examples			
		#1: Defendant, wife, two children. Income: $48,000/yr Discounted Net Daily Income: $48.50	#2: Defendant and 2 children (wife employed) Income: $48,000/yr Discounted Net Daily Income: $28.00	#3: Defendant lives alone/no dependents Income: $225/wk Discounted Net Daily Income: $18.00	#4: Defendant and 3 children Income: $630/mo Discounted Net Daily Income: $5.80
A (e.g., Disord. Cond.)	5-10	$242 - $485	$140 - $280	$91 - $182	$29 - $58
B (e.g., G.M. Trespass)	10-15	$485 - $727	$280 - $420	$182 - $273	$58 - $87
C (e.g., Misd. DWI)	15-20	$727 - $970	$420 - $560	$273 - $364	$87 - $116
D (e.g., G.M. DWI)	20-25	$970 - $1,212	$560 - $700	$364 - $455	$116 - $145
E (Sev. I or II Felony e.g., Check Forgery < $2500; GM Assault 5)	25-30	$1,212 - $1,455	$700 - $840	$455 - $546	$145 - $174
F (Sev. III Felony e.g., Theft < $2,500)	30-35	$1,455 - $1,697	$840 - $980	$546 - $637	$174 - $203
G (Sev. IV Felony e.g., Non-res. Burg.)	35-40	$1,697 - $1,940	$980 - $1,120	$637 - $728	$203 - $232
H (Sev. V Felony e.g., Res. Burg.; Simple Robbery)	40-45	$1,940 - $2,182	$1,120 - $1,260	$728 - $819	$232 - $261
J (Sev. VI Felony e.g., CSC 2 (a & b); Sale Cocaine)	45-50	$2,182 - $2,425	$1,260 - $1,400	$819 - $910	$261 - $290

VII. UPCOMING REPORTS AND OTHER AVAILABLE REPORTS

The 1991 sentencing data is now complete and a report summarizing 1991 sentencing practices should be available shortly.

At the request of the 1991 Legislature, a special study was conducted on controlled substance offenses. The Commission focused the report on the differences between crack and powdered cocaine as this issue was raised by the Supreme Court in State v. Russell. The report was completed in February, 1992 and presented to the Legislature. The report also provides indepth information collected by staff through a survey of probation officers. This information on drug offenders sentenced in 1990 is more complete than information collected in our routine monitoring system. Information collected and summarized includes the specific type and actual amount of drug involved, specific conditions of probation, and chemical dependency related information.

While we have similar information collected on offenders sentenced in 1988 and 1989, we have not been able to dedicate the resources to conduct this special data collection effort on drug offenders sentenced in 1991. This special study requires significant staff efforts beyond our routine monitoring processes as well as the cooperation of numerous probation officers. We will continue to explore possible ways to conduct this study. This indepth study on 1991 cases would allow us to more closely examine the impact of the changes made to the drug laws in 1989.

Below is a list of recent reports that are available upon request.

Report to the Legislature on Controlled Substance Offenses, February, 1992.

Report to the Legislature, January, 1992.

Sentencing Practices for Offenders Convicted of Criminal Vehicular Homicide and Injury, January 1992.

Report to the Legislature on the Mandatory Minimum Sentences for Weapons Offenses, November, 1991.

The Minnesota Sentencing Guidelines: How Do They Work and How Do They Deal With Violent Crime, September, 1991.

Report to the Legislature on Intermediate Sanctions, February, 1991.

Summary of 1990 Sentencing Practices for Convicted Felons, June, 1992.