

Staff Information Paper

Review of Criminal Vehicular Homicide Ranking

September 25, 2020

MSGC staff reports information on criminal vehicular homicide (CVH) offenses in response to public input at the September 10, 2020, MSGC Commission meeting, critical that the Sentencing Guidelines were too lenient with respect to CVH cases.

Under [Minn. Stat. § 609.2112](#) (2019), a person is guilty of CVH and may be sentenced to imprisonment for not more than ten years if the person causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle under one of several enumerated circumstances. The maximum penalty increases to fifteen years if the person has a prior DWI-related offense conviction and the enumerated circumstance is related to alcohol, a controlled substance, or an intoxicating substance.

Legislative History

When the Guidelines were first implemented in 1980, CVH was ranked at Severity Level 5 and the Guidelines recommended a stayed sentence for offenders with a criminal history score of two or less. Effective August 1, 1989, the Commission raised CVH to Severity Level 6. The Commission also decided that the presumptive sentence should be prison, regardless of criminal history score.

The 1990 Legislature revised the CVH statute (Minn. Stat. § 609.21), removing the phrase “in a negligent manner” from the clause relating to driving while over the legal limit, and adding a new clause for having an alcohol concentration at or above the legal limit within two hours of driving. The Commission believed that these clauses were less serious than those involving gross negligence or negligence, and therefore increased the rankings for the gross negligence and negligence clauses to Severity Level 8.* In response to a directive from the 1994 Legislature, the Commission set the severity level for all CVH offenses to Severity Level 8.*

The 1996 Legislature amended CVH to include leaving the scene of an accident resulting in death. The Commission acknowledged the legislative intent to treat these offenses similarly to CVH by maintaining its ranking.

* Then called Severity Level 7. The name of this severity level was incremented to Severity Level 8 in 2002 when the Commission created a new Severity Level 7 to accommodate the new felony DWI offense.

The 2016 Legislature created a 15-year enhanced penalty for substance-related CVH offenses with a prior DWI-related conviction. In response, the Commission created a sentence modifier, Minn. Sentencing Guidelines section 2.G.12, which increases the presumptive duration by fifty percent when the offense is so enhanced.

Presumptive Sentence

Today, CVH is ranked at Severity Level 8, a severity level at which all offenders are recommended a prison sentence, with presumptive durations ranging from 48 months (at a Criminal History Score of 0) to 108 months (at a Criminal History Score of 6). Offenses to which the enhanced penalties apply have presumptive sentences ranging from 72 months (at a Criminal History Score of 0) to 164 months (at a Criminal History Score of 6).

Sentencing Practices

From 2015 to 2019, 150 offenders were sentenced for CVH. The majority of offenders have a criminal history score (CHS) of 0 (85 cases, 57%). Of the 150 offenders who were sentenced, 58 (39%) received a mitigated dispositional departure. 92 offenders received prison – 10 (11%) received a mitigated durational departure and eight (9%) received an aggravated durational departure. Table 1 displays the presumptive sentence and pronounced sentence by criminal history score.

Table 1. Sentencing Practices for Criminal Vehicular Homicide, Sentenced 2015-2019

Criminal History Score	PRESUMPTIVE SENTENCE				Total Sentenced	PRONOUNCED SENTENCE			
	Disposition	Duration				Incarceration Type			Average Prison Term ¹
		Lower	Mid	Upper		Prison	Jail ²	Other	
0	Commit	41	48	57	85	38, 45%	44, 52%	3, 3%	45.5 mo.
1	Commit	50	58	69	26	19, 73%	4, 15%	3, 12%	63.5 mo.
2	Commit	58	68	81	12	11, 93%	1, 8%	-	83.9 mo.
3	Commit	67	78	93	8	7, 87.5%	1, 12.5%	-	88.4 mo.
4	Commit	75	88	105	7	6, 86%	1, 14%	-	81.2 mo.
5	Commit	84	98	117	5	5, 100%	-	-	91.2 mo.
6+ ³	Commit	92	108	129	7	6, 86%	-	1, 14%	106.0 mo.
Total	Commit	-	-	-	150	92, 61%	51, 34%	7, 5%	65.5 mo.

¹ The average pronounced prison term excludes 5 offenders receiving consecutive sentences.

² Offenders who received jail as a condition of probation.

³ An additional three months is added to the presumptive duration when the offender's total criminal history score exceeds the maximum score of 6 and at least one-half custody status point was assigned.

609.2111 DEFINITIONS.

(a) For purposes of sections 609.2111 to 609.2114, the terms defined in this subdivision have the meanings given them.

(b) "Motor vehicle" has the meaning given in section 609.52, subdivision 1, and includes attached trailers.

(c) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

(d) "Intoxicating substance" has the meaning given in section 169A.03, subdivision 11a.

(e) "Qualified prior driving offense" includes a prior conviction:

(1) for a violation of section 169A.20 under the circumstances described in section 169A.24 or 169A.25;

(2) under section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses (2) to (6); 2, clauses (2) to (6); or 3, clauses (2) to (6); or 609.2114, subdivision 1, clauses (2) to (6); or 2, clauses (2) to (6);

(3) under Minnesota Statutes 2012, section 609.21, subdivision 1, clauses (2) to (6); or

(4) under Minnesota Statutes 2006, section 609.21, subdivision 1, clauses (2) to (6); 2, clauses (2) to (6); 2a, clauses (2) to (6); 2b, clauses (2) to (6); 3, clauses (2) to (6); or 4, clauses (2) to (6).

History: 1990 c 602 art 4 s 1; 1996 c 442 s 33; 2007 c 54 art 3 s 11; 2014 c 180 s 6,9; 2016 c 109 s 1; 2018 c 195 art 3 s 18

609.2112 CRIMINAL VEHICULAR HOMICIDE.

Subdivision 1. **Criminal vehicular homicide.** (a) Except as provided in paragraph (b), a person is guilty of criminal vehicular homicide and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the person causes the death of a human being not constituting murder or manslaughter as a result of operating a motor vehicle:

(1) in a grossly negligent manner;

(2) in a negligent manner while under the influence of:

(i) alcohol;

(ii) a controlled substance; or

(iii) any combination of those elements;

(3) while having an alcohol concentration of 0.08 or more;

(4) while having an alcohol concentration of 0.08 or more, as measured within two hours of the time of driving;

(5) in a negligent manner while under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment;

(6) in a negligent manner while any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body;

(7) where the driver who causes the collision leaves the scene of the collision in violation of section 169.09, subdivision 1 or 6; or

(8) where the driver had actual knowledge that a peace officer had previously issued a citation or warning that the motor vehicle was defectively maintained, the driver had actual knowledge that remedial action was not taken, the driver had reason to know that the defect created a present danger to others, and the death was caused by the defective maintenance.

(b) If a person is sentenced under paragraph (a) for a violation under paragraph (a), clauses (2) to (6), occurring within ten years of a qualified prior driving offense, the statutory maximum sentence of imprisonment is 15 years.

Subd. 2. **Affirmative defense.** It shall be an affirmative defense to a charge under subdivision 1, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

History: 1963 c 753 art 1 s 609.21; 1983 c 12 s 1; 1984 c 622 s 24; 1984 c 628 art 3 s 4,11; 1989 c 290 art 6 s 6; art 10 s 7; 1990 c 602 art 4 s 1; 1996 c 408 art 3 s 14; 1996 c 442 s 33; 2004 c 283 s 13; 2007 c 54 art 3 s 7,8,10; 2014 c 180 s 4,9; 2014 c 186 s 2; 2016 c 109 s 2; 2018 c 195 art 3 s 19

4.A. Sentencing Guidelines Grid

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

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11 306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	10 150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Murder, 3rd Degree (Controlled Substances)</i> <i>Assault, 1st Degree</i>	9 86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8 48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7 36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84^{2,3}</i>
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6 21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5 18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4 12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3 12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2 12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1 12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

**Examples of Executed Sentences (Length in Months) Broken Down by:
Term of Imprisonment and Supervised Release Term**

Under Minn. Stat. § 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	78	52	26
13	8 ⅔	4 ⅓	86	57 ⅓	28 ⅔
15	10	5	88	58 ⅔	29 ⅓
17	11 ⅓	5 ⅔	98	65 ⅓	32 ⅔
18	12	6	108	72	36
19	12 ⅔	6 ⅓	110	73 ⅓	36 ⅔
21	14	7	122	81 ⅓	40 ⅔
23	15 ⅓	7 ⅔	134	89 ⅓	44 ⅔
24	16	8	146	97 ⅓	48 ⅔
27	18	9	150	100	50
28	18 ⅔	9 ⅓	158	105 ⅓	52 ⅔
30	20	10	165	110	55
33	22	11	180	120	60
36	24	12	190	126 ⅔	63 ⅓
38	25 ⅓	12 ⅔	195	130	65
39	26	13	200	133 ⅓	66 ⅔
42	28	14	210	140	70
43	28 ⅔	14 ⅓	220	146 ⅔	73 ⅓
45	30	15	225	150	75
48	32	16	230	153 ⅓	76 ⅔
51	34	17	240	160	80
54	36	18	306	204	102
57	38	19	326	217 ⅓	108 ⅔
58	38 ⅔	19 ⅓	346	230 ⅔	115 ⅓
60	40	20	366	244	122
66	44	22	386	257 ⅓	128 ⅔
68	45 ⅓	22 ⅔	406	270 ⅔	135 ⅓
72	48	24	426	284	142