

Modifications to the Minnesota Sentencing Guidelines and Commentary
Effective August 1, 1984

Amending the Commentary language to ensure a consistent order in sentencing multiple offenses concurrently:

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 one point for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing. In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, the offender would receive one point. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same judge, sentencing ~~should~~ shall occur in the order in which the offenses occurred.*

When the judge determines that permissive consecutive sentences will be imposed or determines that a departure regarding consecutive sentences will be imposed, the procedure in section II.F. shall be followed in determining the appropriate sentence duration under the guidelines.

Clarifying the computation of stays of imposition in criminal history scores:

II.B.105. *However, when a prior felony conviction resulted in a stay of imposition which was successfully served, the offense will be counted as a felony for purposes of computing criminal history scores for five years from the date of discharge or expiration of the stay, and thereafter would be considered a misdemeanor. Under Minn. Stat. § 609.13, a person who successfully completes a stay of imposition is deemed to have been convicted of a misdemeanor, not a felony. The Commission thought that the primary purpose of this provision was to protect those who do not recidivate from civil disabilities that may attach to being convicted of a felony, rather than to provide a blanket immunity from having prior felonious behavior considered at future sentencing for those who do recidivate with a new felony offense. ~~The effect of the Commission's five-year limit on considering such sentences as felony convictions, together with the "decay factor" on misdemeanor records (Criminal History item 3e, below) is that stays of imposition following felony convictions shall be counted as a felony for five years from the date of discharge, and thereafter shall not be used in computing criminal history scores, provided the offender did not commit an offense during that five year period which resulted in a misdemeanor, gross misdemeanor, or felony sentence. (The offense of conviction is a felony if the maximum imprisonment sentence authorized by statute is at least one year and one day.)~~*

The stay of imposition will be counted as a misdemeanor five years after the date of discharge from or expiration of the stay of imposition, even if the offender has been sentenced for crimes committed during the five year period. If the offender did not commit an offense which resulted in a misdemeanor, gross misdemeanor, or felony sentence during the five year

period after discharge from or expiration of the stay of imposition, the stay of imposition decays as a misdemeanor and shall not be used at all in computing the criminal history score.

Clarifying Commentary language regarding the decay factor:

II.B.106. Finally, the Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences, but also the time interval between those sentences and subsequent offenses. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-year period. The Commission decided that after a significant period of offense-free living, the presence of old felony sentences should not be considered in computing criminal history scores. A prior felony ~~sentences~~ sentence would not be counted in criminal history score computation if ten years had elapsed between the date of discharge from or expiration of ~~the~~ that sentence and the date of a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was imposed or stayed. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the offense-free period.

Addition of Commentary language to clarify non-traffic status of "Fleeing a Peace Officer in a Motor Vehicle.":

II.B.301. The Commission established a measurement procedure based on units for misdemeanor and gross misdemeanor sentences which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors are assigned one unit, and gross misdemeanors are assigned two units. An offender must have a total of four units to receive one point on the criminal history score. No partial points are given -- thus, a person with three units is assigned no point value. 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 operation. Therefore, prior misdemeanor and gross misdemeanor sentences for DWI and aggravated DWI shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular operation.

The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one and two units respectively in computing the criminal history. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned one point for each sentence subject to the provisions in II.B.1.).

Clarifying Commentary language regarding decay factor:

II.B.304. *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. If five years have elapsed between the expiration of or discharge from a misdemeanor or gross misdemeanor sentence and the date of a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was stayed or imposed, ~~the~~ that misdemeanor or gross misdemeanor ~~sentences~~ sentence will not be used in computing the criminal history score. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the offense-free period.*

Improving the language by removing the phrase "that was imposed.":

Section II.C. (Presumptive Sentence) is modified as follows:

The offense of conviction determines the appropriate severity level on the vertical axis. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

(Rev. Eff. 8/1/82)

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is stayed. For cases contained in cells below and to the right of the line, the sentence should be executed. For cases contained in cells above and to the left of the line, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence.

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd.1(a)) and there was a previous adjudication of guilt for a felony burglary ~~that was imposed~~ 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.

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells below the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge pursuant to Minn. Stat. § 244.10, subd. 2, and Section E of these guidelines.

(Rev. Eff. 11/1/83)

Addition of Commentary language to clarify the presumptive sentence in second or subsequent sex offenses:

II.E.03. In *State v. Feinstein*, 338 N.W.2d 244 (Minn. 1983), the Supreme Court held that judges had the authority to stay execution of mandatory three year prison sentences for second or subsequent sex offenses established by Minn. Stat. § 609.346. Although the Supreme Court decision authorized stays of execution for second or subsequent sex offenses, the presumptive disposition for second or subsequent sex offenses is still imprisonment. A stay of execution for such a case constitutes a dispositional departure and written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the disposition selected is more appropriate, reasonable, or equitable than the presumptive disposition are required.

Updating Commentary language regarding consecutive sentences:

II.F.02. The guidelines provide that when one judge gives consecutive sentences in cases involving multiple current convictions, sentence durations shall be aggregated into a single fixed presumptive sentence. Moreover, the Commission recommends that when an offender is charged with multiple offenses within the same judicial district the trials or sentencings be consolidated before one judge, whenever possible. This will allow the judge to perform the aggregation process described in the guidelines if consecutive sentences are given.

The order of sentencing when consecutive sentences are imposed by the same judge is to sentence the most severe conviction offense first. The presumptive duration for the conviction is determined by the severity level appropriate to the conviction offense and criminal history score of the offender, or the mandatory minimum, whichever is greater. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. A zero criminal history score shall be used in determining the presumptive duration for each subsequent offense sentenced consecutively.

When concurrent and consecutive sentences are imposed for different offenses, the most severe offense involving consecutive sentencing shall be sentenced first. When there are multiple offenses at the highest severity level, the earliest occurring offense among those at the highest severity level shall be sentenced first. After sentencing the most severe offense or the earliest occurring offense among those at the highest severity level, subsequent sentences shall be imposed in the order in which the offenses occurred. The presumptive duration for each offense sentenced consecutively shall be based on a zero criminal history score. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in II.B.

However, if multiple trials or sentencings cannot be consolidated before one judge, and if two or more judges give presumptive sentences some of which are given consecutively to others, the ~~Commission believes there are two options available,~~ following method can be used.

~~The first option would be for the judge choosing to impose a sentence consecutive to a presumptive sentence given by another judge to pronounce the duration indicated at the zero criminal history column and the appropriate severity level for the current offense, and to specify that the sentence shall commence at the end of the term of imprisonment for the previous guideline sentence. Provided that the sentence for the most severe current offense is pronounced first, the total terms of imprisonment resulting from a second (or subsequent) consecutive sentence will be the same as if one judge were sentencing all convictions. However, under this option, the period of supervised release will be somewhat shorter because the offender technically will be serving the period of supervised release on the first offense at the same time he or she is serving the term of imprisonment on the second offense.~~

~~The second option would be for~~ The second or subsequent judge ~~to~~ can pronounce the durations indicated in the Sentencing Guidelines Grid at the zero criminal history column for the severity level for the current offense, and ~~to~~ can state that this sentence would be consecutive to the previous presumptive sentence. ~~The Commission believes that it would be appropriate for~~ The institutional records officer ~~to~~ will aggregate the separate durations into a single fixed presumptive sentence, as well as ~~to~~ aggregate the terms of imprisonment and the periods of supervised release. For example, if Judge A executed a 44 month fixed presumptive sentence, and Judge B later executes a 24 month fixed presumptive sentence to be served consecutively to the first sentence, ~~the Commission feels~~ the records officer has the authority to aggregate those sentences into a single 68 month fixed presumptive sentence, with a 45.3 month term of imprisonment and a 22.7 month period of supervised release, provided that all good time were earned. ~~The Commission believes that nothing in statutory or case law prevents the records officer from performing this aggregation, and that such aggregation provides an orderly, rational, and equitable method for handling consecutive sentences.~~

Under this ~~second option~~ method, if the most severe current offense is sentenced first, the resulting aggregated sentence lengths would be the same as if one judge had sentenced the offenses consecutively.

In all cases, the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

Additions to the Offense Severity Reference Table:

- V Criminal Sexual Conduct 3 - 609.344(e)
- IV Criminal Sexual Conduct 4 - 609.345 (e)
- III Theft of a Firearm - 609.52, subd. 3(3) (e)
- II Accidents - 169.09, subd. 14 (b) (1)
- I Accidents -169.09, subd. 14 (b) (2) (3)
~~Obtaining or Retaining a Child~~ Depriving Another of Custodial or Parental Rights - 609.26

Deletions from the Offense Severity Reference Table:

- IV ~~Neglect of Child - 609.378~~

Additions to the Theft Related Offense List:

- Theft of Telecommunications Services - 609.52, subd. 2 (14)

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 LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Unauthorized Use of Motor Vehicle</i> <i>Possession of Marijuana</i>	I	12*	12*	12*	13	15	17	19 18-20
<i>Theft Related Crimes (\$250-\$2500)</i> <i>Aggravated Forgery (\$250-\$2500)</i>	II	12*	12*	13	15	17	19	21 20-22
<i>Theft Crimes (\$250-\$2500)</i>	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
<i>Nonresidential Burglary</i> <i>Theft Crimes (over \$2500)</i>	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i> <i>Intrafamilial Sexual Abuse, 2nd Degree subd. 1(1)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i>	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
<i>Criminal Sexual Conduct 1st Degree</i> <i>Assault, 1st Degree</i>	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree (felony murder)</i>	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
<i>Murder, 2nd Degree (with intent)</i>	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

- 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.
- Presumptive commitment to state imprisonment.

*one year and one day
(Rev. Eff. 8/1/81; 11/1/83; 8/1/84)

