

Guidelines Modifications
Effective August 1, 1985

C. Presumptive Sentence: 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.

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is executed from those 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 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. Similarly, when the current conviction offense is sale of a severity level VI drug or sale of cocaine and there was a previous adjudication of guilt for a sale of a severity level VI drug or sale of cocaine 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.

Modifications to Offense Severity Reference Table

VIII	Intrafamilial Sexual Abuse 1 - 609.3641-
VII	Criminal Sexual Conduct 2 - 609.343 (c), (d), & (f), & (h) Criminal Sexual Conduct 3 - 609.344 (c), & (d), & (g) Criminal Sexual Conduct 3 - 609.344 (h), (i), & (j) Intrafamilial Sexual Abuse 2 - 609.3642, subd. 1 (2) Intrafamilial Sexual Abuse 3 - 609.3643, subd. 1 (2)
VI	Criminal Sexual Conduct 2 - 609.343 (a), & (b), & (g) Criminal Sexual Conduct 4 - 609.345 (c), & (d), & (g) Criminal Sexual Conduct 4 - 609.345 (h), (i) & (j) Intrafamilial Sexual Abuse 2 - 609.3642, subd. 1(1) Intrafamilial Sexual Abuse 4 - 609.3644, subd. 1 (2)
V	Criminal Sexual Conduct 3 - 609.344 (b), & (e), & (f) Intrafamilial Sexual Abuse 3 - 609.3643, subd. 1(1)
IV	Criminal Sexual Conduct 4 - 609.345 (b), & (e), & (f) Intrafamilial Sexual Abuse 4 - 609.3644, subd. 1 (1)
II	Negligent Fires (damage greater than \$10,000) - 609.576 (b) (4) (3)

Commentary Modifications
Effective August 1, 1985

II.A.02. The date of the offense is important because the offender's age at the time of the offense will determine whether or not the juvenile record is considered, and the date of the offense might determine whether a custody status point should be given, and the date of offense determines the order of sentencing with multiple convictions. For those convicted of a single offense, there is generally no problem in determining the date of the offense. For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply: the following rules should apply in determining the date of the offense:

- ~~a. The date of the most severe offense should be used. If there are two or more convictions of equal severity, and none of a higher severity, the earliest of the offenses should be used to establish the date of the offense.~~
- a. If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the conviction offense.
- b. If multiple offenses are an element of the conviction offense, such as in Subd. 1 (h) (v) of first degree criminal sexual conduct, the date of the earliest offense should be used as the date of the conviction offense.

If the date of the offense is not specified in the complaint and cannot be ascertained with certainty, the judge shall establish the relative order of events, based on the information available, to determine whether or not the juvenile record is to be considered, whether or not a custody status point is to be assigned, and the order of sentencing.

If the date of offense established by the above rules is on or before April 30, 1980, the sentencing guidelines should not be used to sentence the case.

II.A.04. Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes. ~~and more recently, under the intrafamilial sexual abuse statutes.~~ If an offender is convicted of incest under Minn. Stat. § 609.365, and when the offense would have been a violation of one of the criminal sexual conduct statutes ~~or intrafamilial sexual abuse statutes,~~ the severity level of the applicable criminal sexual conduct ~~or intrafamilial sexual abuse~~ statute should be used. For example, if a father is convicted of incest for the sexual penetration of his ten year old daughter, the appropriate severity level would be the same as criminal sexual conduct in the first degree ~~or intrafamilial sexual abuse in the first degree.~~ On the other hand, when the incest consists of behavior not included in the criminal sexual conduct ~~or intrafamilial sexual abuse~~ statutes (for example, consenting sexual penetration involving individuals over age 18) that offense behavior is excluded from the Offense Severity Reference Table.

II.A.06. When felony offenses are inadvertently omitted from the sentencing guidelines, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. A felony offense is inadvertently omitted when the offense appears neither in the Offense Severity Reference Table nor in the list of offenses in II.A.03. which are excluded from the Offense Severity Reference Table.

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 shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in II.A.02.

II.B.108. A felony sentence imposed for a criminal conviction treated pursuant to Minn. Stat. Ch. 242 (Youth Conservation Commission and later Youth Corrections Board, repealed 1977) shall be assigned one felony point in computing the criminal history score according to procedures in II.B.1.

II.B.204. When three months is added to the cell duration as a result of the custody status provision, the lower and upper durations of the sentence range in the appropriate cell are also increased by three months.

II.B.205. When the conviction offense is an attempt or conspiracy under Minn. Stats. § 609.17 or 609.175 and three months is added to the cell duration as a result of the custody status provision, the following procedure shall be used in determining the presumptive duration for the offense. First, three months is added to the appropriate cell duration for the completed offense, which becomes the presumptive duration for the completed offense. The presumptive duration for the completed offense is then divided by two which is the presumptive duration for those convicted of attempted offenses or conspiracies. No such presumptive sentence, however, shall be less than one year and one day.

II.B.302. The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. With the exception of offenses with monetary thresholds the Commission limited consideration of misdemeanors to those which are misdemeanors under existing state statute, or ordinance misdemeanors which substantially conform to existing state statutory misdemeanors. This was done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

II.C.07. The term "sale" as it relates to presumptive imprisonment for second or subsequent sale of a severity level VI drug or sale of cocaine encompasses all elements of Minn. Stat. § 152.09 subd. 1 (1) which reads "Manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance."

II.F.05. Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery with use of a gun and had a zero criminal history score, the mandatory minimum sentence and the presumptive sentence for the offense would be 36 months; ~~with a presumptive sentence of 54 months~~; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.

II.F.06. The criterion that crimes must be against different persons for permissive consecutive sentencing is designed to exclude consecutive sentences in two types of situations. One type involves multiple offenses against a victim in a single behavioral incident such as burglary with a dangerous weapon and aggravated robbery with bodily harm. The requirement of different victims is also intended to exclude consecutive sentences in domestic abuse and child abuse situations when there are multiple incidents perpetrated against a victim over time. Assault, criminal sexual conduct, ~~intrafamilial sexual abuse~~, and incest are the conviction offenses most frequently found in domestic abuse and child abuse cases. Multiple incidents against a victim typifies these types of situations. In fact, ~~the intrafamilial sexual abuse~~ one criminal sexual conduct provisions delineates multiple incidents as an element of the offense. The high severity rankings assigned to offenses that tend to involve very young victims reflect the understanding that multiple incidents generally occur in these kinds of situations. The Commission believes that a uniform policy reflected in high severity rankings provides the best approach in sentencing these cases. Permissive consecutive sentences would result in enormous disparity based on varying charging practices of prosecutors and discretionary judicial decisions.

**Additional Modifications to
Minnesota Sentencing Guidelines and Commentary
July 25, 1985**

In the Offense Severity Reference Table, 325F.5213, Precious Metal Dealers, Regulatory Provisions, has been renumbered to 325.73 as the result of a 1981 legislative change in numbering.

II.A.04. has been revised to delete references to intrafamilial sexual abuse, as follows:

"II.A.04. Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes, and more recently, under the ~~intrafamilial sexual abuse statutes~~. If an offender is convicted of incest under Minn. Stat. § 609.365, and when the offense would have been a violation of one of the criminal sexual conduct statutes ~~or intrafamilial sexual abuse statutes~~, the severity level of the applicable criminal sexual conduct ~~or intrafamilial sexual abuse~~ statute should be used. For example, if a father is convicted of incest for the sexual penetration of his ten year old daughter, the appropriate severity level would be the same as criminal sexual conduct in the first degree ~~or intrafamilial sexual abuse in the first degree~~. On the other hand, when the incest consists of behavior not included in the criminal sexual conduct ~~or intrafamilial sexual abuse~~ statutes (for example, consenting sexual penetration involving individuals over age 18) that offense behavior is excluded from the Offense Severity Reference Table."

II.F.06. has also been revised to delete references to intrafamilial sexual abuse, as follows:

"II.F.06. The criterion that crimes must be against different persons for permissive consecutive sentencing is designed to exclude consecutive sentences in two types of situations. One type involves multiple offenses against a victim in a single behavioral incident such as burglary with a dangerous weapon and aggravated robbery with bodily harm. The requirement of different victims is also intended to exclude consecutive sentences in domestic abuse and child abuse situations when there are multiple incidents perpetrated against a victim over time. Assault, criminal sexual conduct, ~~intrafamilial sexual abuse~~, and incest are the conviction offenses most frequently found in domestic abuse and child abuse cases. Multiple incidents against a victim typifies these types of situations. In fact, ~~the intrafamilial sexual abuse one criminal sexual conduct provisions~~ delineates multiple incidents as an element of the offense. The high severity rankings assigned to offenses that tend to involve very young victims reflect the understanding that multiple incidents generally occur in these kinds of situations. The Commission believes that a uniform policy reflected in high severity rankings provides the best approach in sentencing these cases. Permissive consecutive sentences would result in enormous disparity based on varying charging practices of prosecutors and discretionary judicial decisions."

