MINNESOTA SENTENCING GUIDELINES and COMMENTARY

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MINNESOTA SENTENCING GUIDELINES AND COMMENTARY

I. Statement of Purpose and Principles

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.

The sentencing guidelines embody the following principles:

1. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.

2. While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons.

3. Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

4. While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

II. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grid. The grid represents the two dimensions most important in current sentencing and releasing decisions--offense severity and criminal history.

A. **Offense Severity:** The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. Felony offenses are arrayed into ten levels of severity, ranging from low (Severity Level I) to high (Severity Level X). First degree murder is excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity. The most frequently occurring offenses within each severity level are listed on the vertical axis of the Sentencing Guidelines Grid. The severity level for infrequently occurring offenses can be determined by consulting Section V, entitled "Offense Severity Reference Table."

Comment

II.A.01. *Offense severity is determined by the offense of conviction. The Commission thought that serious legal and ethical questions would be raised if punishment were to be determined on the basis of alleged, but unproven, behavior, and prosecutors and defenders would be less accountable in plea negotiation. It follows that if the offense of conviction is the standard from which to determine severity, departures from the guidelines should not be permitted for elements of offender behavior not within the statutory definition of the offense of conviction. Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.*

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, 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:*

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.03. *The following offenses were excluded from the Offense Severity Reference Table:*

1. *Abortion - 617.20; 617.22; 145.412*
2. *Aiding suicide - 609.215*
3. *Altering engrossed bill - 3.191*
4. *Animal fighting - 343.31*
5. *Bigamy - 609.355*
6. *Corrupting legislator - 609.425*
7. *Criminal Sexual Conduct, Third Degree - 609.344(a) (By definition the perpetrator must be a juvenile.)*
8. *Criminal Sexual Conduct, Fourth Degree - 609.345(a) (By definition the perpetrator must be a juvenile.)*
9. *Criminal syndicalism - 609.405*
10. *Falsely impersonating another - 609.83*
11. *Horse racing-prohibited act - 299J.29*
12. *Incest - 609.365*
13. *Misprision of treason - 609.39*
14. *Motor vehicle excise tax - 297B.10*
15. *Obscene materials; distribution - 617.2Y1*
16. *Obscenity re minors - 617.246*
17. *Obstructing military forces - 609.395*
18. *Other acts relating to gambling - 609.76*
19. *Penalties (sales tax violations) - 297A.39*
20. *Possession of pictorial representations of minors-617.24*
21. *Prohibiting promotion of minors to engage in obscene works - 617.246*
22. *Sales tax without permit, violations - 297A.08*
23. *Treason - 609.385*

II.A.04. *Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct 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, the severity level of the applicable criminal sexual conduct 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. On the other hand, when the incest consists of behavior not included in the criminal sexual conduct statutes (for example, consenting sexual penetration involving individuals over age 18) that offense behavior is excluded from the Offense Severity Reference Table.*

II.A.05. *The other offenses were excluded because prosecutions are rarely, if ever, initiated under them. When persons are convicted of offenses excluded from the Offense Severity Reference Table, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. If a significant number of future convictions are obtained under one or more of the excluded offenses, the Commission will determine an appropriate severity level, and will add the offense to 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.*

B. **Criminal History:** A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grid. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.

Comment

II.B.01. *The sentencing guidelines reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary factor in dispositional decisions. Under sentencing guidelines, the offense of conviction is the primary factor, and criminal history is a secondary factor in dispositional decisions. In the past there were no uniform standards regarding what should be included in an offender's criminal history, no weighting format for different types of offenses, and no systematic process to check the accuracy of the information on criminal history.*

II.B.02. *The guidelines provide uniform standards for the inclusion and weighting of criminal history information. The sentencing hearing provides a process to assure the accuracy of the information in individual cases. These improvements will increase fairness and equity in the consideration of criminal history.*

II.B.03. *No system of criminal history record keeping ever will be totally accurate and complete, and any sentencing system will have to rely on the best available criminal history information.*

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned one point for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing.
    a. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. § § 609.585 or 609.251, the offender is assigned one point;
    b. An offender shall not be assigned more than two points for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;
    c. When a prior felony conviction resulted in a misdemeanor or gross misdemeanor sentence, that conviction shall be counted as a misdemeanor or gross misdemeanor conviction for purposes of

computing the criminal history score, and shall be governed by item 3 below;

d. When a prior felony conviction results in a stay of imposition, and when that stay of imposition was successfully served, it shall be counted as a felony conviction for purposes of computing the criminal history score for five years from the date of discharge, and thereafter shall be counted as a misdemeanor under the provisions of item 3 below;

e. Prior felony sentences will not be used in computing the criminal history score if a period of ten years has elapsed since the date of discharge from or expiration of the sentence, to the date of offense of any subsequent misdemeanor, gross misdemeanor or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence whether stayed or imposed.

Comment

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.*

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.

II.B.102. *In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 609.585, under which persons committing theft or other felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and other felony, or a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. In all other instances of multiple convictions arising from a single course of conduct, where there is a single victim, persons may be sentenced on only one offense. For purposes of computing criminal history, the Commission decided that prior multiple sentences under provisions of Minn. Stats. § § 609.585 or 609.251 should also receive one point. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to that*

statute, to prevent systematic manipulation of Minn. Stats. § § 609.585 or 609.251 in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. § § 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

II.B.103. *To limit the impact of past variability in prosecutorial discretion, the Commission placed a limit of two points on computing prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims. For example, if an offender had robbed a crowded liquor store, he could be convicted of and sentenced for the robbery, as well as one count of assault for every person in the store at the time of the offense. Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission placed a limit of two points in such situations. This still allows differentiation between those getting multiple sentences in such situations from those getting single sentences, but it prevents the perpetuation of gross disparities from the past.*

The two point limit in calculating criminal history when there are multiple felony sentences arising out of a single course of conduct with multiple victims also applies when such sentences are imposed on the same day.

II.B.104. *When an offender was convicted of a felony but was given a misdemeanor or gross misdemeanor sentence, the offense will be counted as a misdemeanor or gross misdemeanor for purposes of computing the criminal history score. The Commission recognized that the classification of criminal conduct as with a felony, misdemeanor, or gross misdemeanor is determined, legally, by the sentence given rather than the conviction offense. They also recognized that where such sentences were given, it was the opinion of the judge that the offending behavior did not merit felonious punishment, or other circumstances existed which justified a limit on the severity of the sanction.*

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 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.

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 sentence would not be counted in criminal history score computation if ten years had elapsed between the date of discharge from or expiration of 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.*

II.B.107. *If the offender's prior record involves convictions of offenses that were committed prior to August 1, 1983, for which fines were the only sanction given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:*

If fine imposed is between:	*Classify offense as:*
$101 - $500	*Misdemeanor*
$501 - $1,000	*Gross Misdemeanor*
more than $1,000	*Felony*

If the offender's prior record involves convictions of offenses that were committed on or after August 1, 1983, for which fines were the only sanctions given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:

If fine imposed is between:	*Classify offense as:*
$101 - $700	*Misdemeanor*
$701 - $3,000	*Gross Misdemeanor*
more than $3,000	*Felony*

If a fine is the only penalty provided by statute for the offense of conviction, and the fine imposed is in excess of $500, then the offense would be counted as a gross misdemeanor. (An example of this situation is Distribution of Obscene Materials, Minn. Stat. 617.241 (1982)).

If a fine is $100 or less, and that is the only sanction imposed, the conviction would be deemed a petty misdemeanor under Minn. R. Crim. P. § 23.02, and would not be used to compute the criminal history score. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. § 23.04, will not be used to compute the criminal history score.

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.*

2. The offender is assigned one point if he or she was on probation or parole or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor, or released pending sentencing at the time the felony was committed for which he or she is being sentenced.

   The offender will not be assigned a point under this item when:

   a. the person was committed for treatment or examination pursuant to Minn. R. Crim. P. § 20; or

   b. the person was on juvenile probation or parole status at the time the felony was committed for which he or she is being sentenced.

   An additional three months shall be added to the duration of the appropriate cell time which then becomes the presumptive duration when:

   a. a custody status point is assigned; and

   b. the criminal history points that accrue to the offender without the addition of the custody status point places the offender in the far right hand column of the Sentencing Guidelines Grid.

Comment

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody following conviction of a felony or gross misdemeanor when the offense was committed for which they are now being sentenced. Criminal justice custodial status includes probation (supervised or unsupervised), parole, supervised release, or confinement in a jail, workhouse, or prison, or work release, following conviction of a felony or gross misdemeanor, or release pending sentencing following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor. Commitments under Minn. R. Crim. P. § 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and, in the future, supervised release will be the custodial statuses that most frequently will result in the assignment of a point. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony or gross misdemeanor. Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*

II.B.202. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. However, one gross misdemeanor offense--aggravated driving while intoxicated--is particularly relevant in sentencing cases of criminal vehicular operation. Because of its particular relevance in cases of this nature, a custody status point shall be assigned if the offender is under probation,*

jail, or other custody supervision following conviction of aggravated DWI, when the felony for which the offender is being sentenced is criminal vehicular operation, and the criminal vehicular operation occurred while under that supervision.

II.B.203. *The most problematic consequence of a criminal history score in excess of the maximum points differentiated by the Sentencing Guidelines Grid is that no additional penalty accrues for engaging in felonious behavior while under custody supervison. For example, if an offender has a criminal history score of seven and is released pending sentencing for a severity level three offense, and he or she commits another severity level three offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. There is a presumption against consecutive sentences for property offenses, and therefore no additional penalty is provided when this type of situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above that displayed by the Sentencing Guidelines Grid is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current offense of conviction. Criminal history is of secondary importance and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grid and with the special provision for maintaining the impact of the custody status provision. Further differentiation is deemed unnecessary to achieve proportionality in sentencing.

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.*

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and two units for each gross misdemeanor conviction (excluding traffic offenses with the exception of DWI and aggravated DWI offenses when the current conviction offense is criminal vehicular operation) for which a sentence was stayed or imposed before the current sentencing. 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.

a. Only convictions of statutory misdemeanors or ordinance misdemeanors that conform substantially to a statutory misdemeanor shall be used to compute units.

b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, and the most serious conviction is for a gross misdemeanor, no offender shall be assigned more than two units.

c. Prior misdemeanor and gross misdemeanor sentences will not be used in computing the criminal history score if a period of five years has elapsed since the date of discharge from or expiration of the sentence to the date of offense of any subsequent misdemeanor, gross misdemeanor, or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence, whether stayed or imposed.

d. A prior misdemeanor sentence shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

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.).

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.B.303. *The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a two-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.*

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, that misdemeanor or gross misdemeanor 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.*

A ten year limit for considering misdemeanor sentences was adopted for two reasons. First, the retention of misdemeanor records for extended periods is prohibitively expensive for many counties and therefore retention schedules have varied among the counties. A ten year limit provides a uniform standard for considering misdemeanor sentences and allows for the establishment of a uniform retention schedule. Secondly, the Commission feels that the relevance of a prior misdemeanor offense for current felony sentencing is significantly reduced over time.

II.B.305. *If an offender was convicted of a gross misdemeanor, but given a misdemeanor sentence, that is counted as a misdemeanor in computing the criminal history score.*

II.B.306. *Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. § 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. § 23.02, will not be used to compute the criminal history score.*

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that would have been felonies if committed by an adult, provided that:
    a. Findings were made by the juvenile court pursuant to an admission in court or after trial;
    b. Each offense represented a separate behavioral incident or involved separate victims in a single behavioral incident;
    c. The juvenile offenses occurred after the offender's sixteenth birthday;
    d. The offender had not attained the age of twenty-one at the time the felony was committed for which he or she is being currently sentenced; and
    e. No offender may receive more than one point for offenses committed and prosecuted as a juvenile.

Comment

II.B.401. *The juvenile history item is included in the criminal history index to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history index. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

II.B.402. *First, only juvenile offenses that would have been felonies if committed by an adult will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. Consistent with Minn. Stat. § 609.035 which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile offenses arising from separate courses of conduct contribute to the juvenile point, unless multiple victims were involved.*

II.B.403. *Second, the juvenile offenses must have been committed after the offender's sixteenth birthday. The Commission chose the date of the offense rather than the date the findings were made by the court to eliminate variability in application based on differing juvenile court practices.*

II.B.404. *Third, juvenile offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of 21 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense*

rather than at time of sentencing to prevent disparities resulting from system processing variations.

II.B.405. *Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile offenses to equal one point on the criminal history score, and that no offender may receive more than one point on the basis of prior juvenile offenses. Again, no partial points are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score. The one point limit was deemed consistent with the purpose for including juvenile record in the criminal history--to distinguish the young adult felon with no juvenile record of felony-type behavior from the young adult offender who has a prior juvenile record of repeated felony-type behavior. The one point limit also was deemed advisable to limit the impact of findings obtained under a juvenile court procedure that does not afford the full procedural rights available in adult courts.*

II.B.406. *Under Laws of 1980, Chapter 580, sec. 16 (amends Minn. Stat. § 260.161, subd. 1), juvenile courts are required to maintain juvenile records until the offender reaches the age of 23, and release those records to requesting adult courts. The adult courts are authorized to use juvenile information to determine a proper sentence.*

5. The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law.

Comment

II.B.501. *Out-of-state convictions include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations.*

II.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history index score. It was recognized, however, that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. There is no uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor."*

II.B.503. *It was concluded, therefore, that designation of out-of-state offenses as felonies or lesser offenses, for purposes of the computation of the criminal history index score, must properly be governed by Minnesota law.*

II.B.504. *Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current offense definitions. An exception to this are offenses in which a monetary threshold determines the offense classification. The monetary threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

II.B.505. *It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded foreign convictions. In so doing, sentencing courts should consider the nature and definition of the foreign offense, as well as the sentence received by the offender.*

6. The criminal history score is the sum of points accrued under items one through four above.

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.

Comment

II.C.01. *The guidelines provide sentences which are presumptive with respect to (a) disposition--whether or not the sentence should be executed, and (b) duration--the length of the sentence. For cases below and to the right of the dispositional line, the guidelines create a presumption in favor of execution of the sentence. For cases in cells above and to the left of the dispositional line, the guidelines create a presumption against execution of the sentence, unless the conviction offense carries a mandatory minimum sentence.*

The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for most property offenders. The Commission believes that a rational sentencing policy requires such trade-offs, to ensure the availability of correctional resources for the most serious offenders. For the first year of guidelines operation, that policy was reflected in sentencing practices. However, by the third year of guideline operation, the percentage of offenders with criminal history scores of four or more had increased greatly, resulting in a significant increase in imprisonment for property offenses. Given finite resources, increased use of imprisonment for property offenses results in reduced prison resources for person offenses. The allocation of scarce resources will be monitored and evaluated on an ongoing basis by the Commission.

II.C.02. *In the cells below and to the right of the dispositional line, the guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months shall be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell of the Sentencing Guidelines Grid is not a departure from the guidelines, and any sentence length given which is outside that range is a departure from the guidelines. In the cells above and to the left of the dispositional line, the guidelines provide a single fixed presumptive sentence length.*

II.C.03. *When a stay of execution is given, the presumptive sentence length shown in the appropriate cell should be pronounced, but its execution stayed. If the sentence length pronounced, but stayed, differs from that shown in the appropriate cell, that is a departure from the guidelines.*

II.C.04. *When a stay of imposition is given, no sentence length is pronounced, and the imposition of the sentence is stayed to some future date. If that sentence is ever imposed, the presumptive sentence length shown in the appropriate cell should be pronounced, and a decision should be made on whether to execute the presumptive sentence length given. If the sentence length pronounced at the imposition of the sentence differs from that shown in the appropriate cell of the Sentencing Guidelines Grid, that is a departure from the guidelines.*

II.C.05. *If an offender is convicted of a felony, and no stayed sentence is given under Minn. Stat. § § 609.13 through 609.14, and the judge imposes or stays a misdemeanor or gross misdemeanor sentence, that is a departure from the guidelines.*

II.C.06. *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.*

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."*

D. **Departures from the Guidelines:** The sentences provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case. The judge shall utilize the presumptive sentence provided in the sentencing guidelines unless the individual case involves substantial and compelling circumstances. When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, the court should pronounce a sentence which is proportional to the severity of the offense of conviction and the extent of the offender's prior criminal history, and should take into substantial consideration the statement of purpose and principles in Section I, above. When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.

Comment

II.D.01. *The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines, and stay or impose a sentence that is deemed to be more appropriate, reasonable, or equitable than the presumptive sentence.*

II.D.02. *Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.*

II.D.03. *The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.*

1. Factors that should not be used as reasons for departure: The following factors should not be used as reasons for departing from the presumptive sentences provided in the Sentencing Guidelines Grid:

   a. Race

   b. Sex

   c. Employment factors, including:

      (1) occupation or impact of sentence on profession or occupation;

      (2) employment history;

      (3) employment at time of offense;

      (4) employment at time of sentencing.

   d. Social factors, including:

      (1) educational attainment;

      (2) living arrangements at time of offense or sentencing;

      (3) length of residence;

      (4) marital status.

   e. The exercise of constitutional rights by the defendant during the adjudication process.

Comment

II.D.101. *The Commission believes that sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income levels. The Commission's study of Minnesota sentencing decisions indicated that, unlike many other states, these factors generally were not important in dispositional decisions. Therefore, their exclusion as reasons for departure should not result in a change from current judicial sentencing practices. The only excluded factor which was associated with judicial dispositional decisions was employment at time of sentencing. In addition to its correlation with race and income levels, this factor was excluded because it is manipulable--offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing. While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at time of sentencing.*

II.D.102. *In addition, the Commission determined that the severity of offenders' sanctions should not vary depending on whether or not they exercise constitutional rights during the adjudication process.*

II.D.103. *It follows from the Commission's use of the conviction offense to determine offense severity that departures from the guidelines should not be permitted for elements of alleged offender behavior not within the definition of the offense of conviction. Thus, if an offender is convicted of simple robbery, a departure from the guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.*

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

   a. *Mitigating Factors:*

      (1) The victim was an aggressor in the incident.

      (2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.

      (3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.

      (4) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

   b. *Aggravating Factors:*

      (1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.

      (2) The victim was treated with particular cruelty for which the individual offender should be held responsible.

      (3) The current conviction is for an offense in which the victim was injured and there is a prior felony conviction for an offense in which the victim was injured.

      (4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or

property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

(a) the offense involved multiple victims or multiple incidents per victim;

(b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;

(c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or

(e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

(5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

(a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or

(b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(c) the offense involved the manufacture of controlled substances for use by other parties; or

(d) the offender knowingly possessed a firearm during the commission of the offense; or

(e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional).

Comment

II.D.201. *The Commission provided a non-exclusive list of reasons which may be used as reasons for departure. The factors are intended to describe specific situations involving a small number of cases. The Commission rejected factors which were general in nature, and which could apply to large numbers of cases, such as intoxication at the time of the offense. The factors cited are illustrative and are not intended to be an exclusive or exhaustive list of factors which may be used as reasons for departure. Some of these factors may be considered in establishing conditions of stayed sentences, even though they may not be used as reasons for departure. For example, whether or not a person is employed at time of sentencing may be an important factor in deciding whether restitution should be used as a condition of probation, or in deciding on the terms of restitution payment.*

E. **Mandatory Sentences:** When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day, the presumptive duration of the prison sentence should be one year and one day or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

When an offender has been convicted of an offense with a mandatory minimum sentence of three years, the presumptive duration of the prison sentence should be 36 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

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, which has a mandatory life imprisonment sentence, is excluded from offenses covered by the sentencing guidelines.

Comment

II.E.01. *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall below the dispositional line. However, some cases carry a mandatory prison sentence under state law but fall above the dispositional line on the Sentencing Guidelines Grid. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.*

II.E.02. *In 1981 the mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minn. Stat. § 609.11) was amended to provide prosecutors with the authority to make a motion to sentence apart from the mandatory minimum sentence. In State v. Olson, 325 N.W.2d 13 (Minn. 1982), the Supreme Court extended that authority to judges as well. When a motion to sentence apart from the mandatory minimum is made by the prosecutor or the judge, it becomes legal to stay imposition or execution of sentence or to impose a lesser sentence than the mandatory minimum. When such a motion is made, the presumptive disposition for the case is still imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater. A stay of imposition or execution for the case constitutes a mitigated dispositional departure. The imposition of a duration less than the mandatory minimum or cell time, if the latter is greater, constitutes a mitigated durational departure. Written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the sentence selected is more appropriate, reasonable or equitable than the presumptive sentence are required.*

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.*

F. **Concurrent/Consecutive Sentences:** When an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentences shall be given in all cases not covered below. The most severe offense among multiple current offenses determines the appropriate offense severity level for purposes of determining the presumptive guideline sentence.

Consecutive sentences may be given only in the following cases:

1. When a prior felony sentence for a crime against a person has not expired or been discharged and one or more of the current felony convictions is for a crime against a person, and when the sentence for the most severe current conviction is executed according to the guidelines; or
2. When the offender is convicted of multiple current felony convictions for crimes against different persons, and when the sentence for the most severe current conviction is executed according to the guidelines; or
3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485. 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.

The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and section E of these guidelines.

For persons given consecutive sentences, the sentence durations for each separate offense sentenced consecutively shall be aggregated into a single presumptive sentence. The presumptive duration for offenses sentenced consecutively is determined by locating the Sentencing Guidelines Grid cell defined by the most severe offense and the offender's criminal history score and by adding to the duration shown therein the duration indicated for every other offense sentenced consecutively at their respective levels of severity but at the zero criminal history column on the Grid. The purpose of this procedure is to count an

individual's criminal history score only one time in the computation of consecutive sentence durations.

When a current conviction for a crime against a person is sentenced consecutive to a prior indeterminate or presumptive sentence for a crime against a person, the presumptive duration for the current conviction is determined by locating the severity level appropriate to the current conviction offense and the zero criminal history column or the mandatory minimum, whichever is greater.

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

Comment

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. The Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines. The guidelines create a presumption against the use of consecutive sentences in 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. *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.

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 following method can be used.

The second or subsequent judge 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 can state that this sentence would be consecutive to the previous presumptive sentence. The institutional records officer will aggregate the separate durations into a single fixed presumptive sentence, as well as 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 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.

Under this 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.

II.F.03. *For cases with a prior felony sentence for a crime against a person, which has neither expired nor been discharged, and a single current conviction for a crime against a person, 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. 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.*

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980.

II.F.04. *The sentencing guidelines provide that sentences must be stayed or imposed if they are to be used in computing the criminal history score. When multiple convictions are sentenced concurrently, separate sentences arising out of separate behavioral incidents must be stayed or imposed on each conviction if they are to be used in computing future criminal history scores. If an offender is convicted of two*

offenses arising from separate behavioral incidents, but the judge stayed or imposed a sentence for only one conviction, only one point would accrue to the prior felony sentences item in the computation of a future criminal history score. If the judge stayed or imposed a sentence for each conviction offense in this example, then two points would accrue to the prior felony sentences item in future criminal history score computation.

The phrase "multiple current felony convictions" means two or more cases in which the defendant has been found guilty by verdict or by a finding of the Court following trial, or in which the defendant has entered a plea of guilty, and for which sentences have not been stayed or imposed. Multiple current convictions may occur before one Court or two or more Courts.

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; 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, 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, one criminal sexual conduct provision 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.*

There are rare instances in which multiple person crimes are committed at different times against a victim in other than a domestic abuse or child abuse situations. For example, a pharmacist could be a victim of an aggravated robbery at one point and some time later be robbed by the same offender a second time. Circumstances such as these are clearly atypical. In the rare instances in which this type of situation occurs, consecutive sentencing is permissive under the guidelines.

G. **Convictions for Attempts or Conspiracies:** For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.09, in which event the presumptive sentence shall be that for the completed offense. Further, the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	70 *67-73*	84 *80-88*	97 *92-103*	122 *115-128*	146 *139-153*	170 *162-179*	194 *185-203*

Comment

II.G.01. *The presumptive sentence length for those convicted of attempted offenses or conspiracies to commit an offense is one-half the duration provided in the appropriate cell of the Sentencing Guidelines Grid for the completed offense, provided that no such sentence shall be less than one year and one day.*

II.G.02. *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.*

II.G.03. *If the fixed presumptive sentence is an odd number, division by two will produce a presumptive sentence involving a half month. For example, 41 months divided by two equals 20.5 months. In that case, 20.5 months is the presumptive sentence length.*

H. **Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence:** If the presumptive sentence duration given in the appropriate cell of the Sentencing Guidelines Grid exceeds the statutory maximum sentence for the offense of conviction, the statutory maximum sentence shall be the presumptive sentence.

Comment

II.H.01. *There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. This will occur in a handful of cases each year, generally involving the offense of Assault in the second degree, for offenders with criminal history scores of six or more. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence length.*

III. Related Policies

A. Establishing Conditions of Stayed Sentences:

1. *Method of Granting Stayed Sentences:* When the appropriate cell of the Sentencing Guidelines Grid provides a stayed sentence, and when the judge chooses to grant that stay by means of a stay of execution, the duration of prison sentence shown in the appropriate cell is pronounced, but its execution is stayed. When the judge chooses to grant the stay by means of a stay of imposition, the duration of the prison sentence in the appropriate cell is not pronounced and the imposition of the sentence is stayed. The judge would then establish conditions which are deemed appropriate for the stayed sentence, including establishing a length of probation, which may exceed the duration of the presumptive prison sentence.

   The Commission recommends that stays of imposition be used as the means of granting a stayed sentence for felons convicted of lower severity offenses with low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

Comment

III.A.101. *When the presumptive sentence is a stay, the judge may grant the stay by means of either a stay of imposition or a stay of execution. The use of either a stay of imposition or stay of execution is at the discretion of the judge. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and ought to be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, judges use stays of imposition most frequently for these types of offenders.*

III.A.102. *When a judge grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell of the Sentencing Guidelines Grid, and may be as long as the statutory maximum for the offense of conviction. Thus, for an offender convicted of Theft, $250-$2,500 (severity level III), with a criminal history score of 1, the duration of the stay could be up to five years. The 13 month sentence shown in the guidelines is the presumptive sentence length and, if imposed, would be executed if (a) the judge departs from the dispositional recommendation and decides to execute the sentence, or (b) if the stay is later revoked and the judge decides to imprison the offender.*

2. *Conditions of Stayed Sentences:* The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sentences. The Commission recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including, but not limited to, retribution, rehabilitation, public protection, restitution, deterrence, and public condemnation of criminal conduct. The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The development of principled standards for establishing conditions of stayed sentences requires that judges first consider the objectives to be served by a stayed sentence and, second, consider the resources available to achieve those objectives. When retribution is an important objective of a stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender, and judges should consider the availability and adequacy of local jail or correctional facilities in establishing such sentences. The Commission urges judges to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. When rehabilitation is an important objective of a stayed sentence, judges are urged to make full use of local programs and resources available to accomplish the rehabilitative objectives. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds. The Commission urges judges to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for persons with short criminal histories who are convicted of property crimes, although the use of such conditions in other cases may be appropriate. Supervised probation should continue as a primary condition of stayed sentences. To the extent that fines are used, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

Comment

III.A.201. *The judge may attach any conditions to a stayed sentence which are permitted by law and which he or she deems appropriate. The guidelines neither enlarge nor restrict the conditions that judges may attach to a stayed sentence. Laws 1978, Chapter 723 permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop such guidelines during their initial guideline development effort. The Commission has provided some language in the above section of the guidelines which provides general direction in the use of conditions of stayed sentences.*

B. **Revocation of Stayed Sentences:** The decision to imprison an offender following a revocation of a stayed sentence should not be undertaken lightly and, in particular, should not be a reflexive reaction to technical violations of the conditions of the stay. Great restraint should be exercised in imprisoning those violating conditions of a stayed sentence who were convicted originally of low severity offenses or who have short prior criminal histories. Rather the Commission urges the use of more restrictive and onerous conditions of a stayed sentence, such as periods of local confinement. Less judicial forbearance is urged for persons violating conditions of a stayed sentence who were convicted of a more severe offense or who had a longer criminal history. Even in these cases, however, imprisonment upon a technical violation of the conditions of a stayed sentence should not be reflexive.

The Commission would view commitment to the Commissioner of Corrections following revocation of a stayed sentence to be justified when:

1. The offender has been convicted of a new felony for which the guidelines would recommend imprisonment; or
2. Despite prior use of expanded and more onerous conditions of a stayed sentence, the offender persists in violating conditions of the stay.

Comment

III.B.01. *The guidelines are based on the concept that the severity of the sanction ought to depend primarily on the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions.*

C. **Jail Credit:** Pursuant to Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P. § 27.03, subd. 4(b), when a convicted felon is committed to the custody of the Commissioner of Corrections, the court shall assure that the record accurately reflects all time spent in custody between arrest and sentencing, including examinations under Minn. R. Crim. P. § § 20 or 27.03, subd.1(A), for the offense or behavioral incident for which the person is sentenced, which time shall be deducted by the Commissioner of Corrections from the sentence imposed. Time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender committed to the custody of the Commissioner of Corrections shall be included in the above record, and shall be deducted from the sentence imposed. Time spent in confinement under Huber Law (Minn. Stat. § 631.425) shall be awarded at the rate of twelve hours for each 24 hour period. See State v. Deschampe, 332 N.W.2d. 18 (Minn. 1983).

Comment

III.C.01. *The Commission believes that offenders should receive jail credit for time spent in custody between arrest and sentencing. During that time, the defendant is presumed innocent. There is evidence that the poor and members of racial minorities are more likely to be subject to pre-trial detention than others. Granting such jail credit for those receiving executed sentences makes the total periods of incarceration more equitable.*

III.C.02. *The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed by means of a departure the term of imprisonment would be 12 months if all good time were earned. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.*

Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of 12 hours for each 24 hour period. When a condition of jail time is that it be served on week-ends, the actual time spent in jail rounded to the nearest whole day, should be credited. For example, if an offender arrives at jail at 6:00 p.m. Friday and leaves at 8:00 p.m. Sunday, 50 hours have been served and that time would be rounded to two days of jail credit if the stay were later revoked and the sentence executed.

Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities as a condition of a stay of imposition or stay of execution.

III.C.03. *In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the sentence.*

Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond. In order to correct this incongruity, computation of projected good time shall be made by the Commission of Corrections at time of admission to prison and shall be subtracted from the sentence prior to crediting an offender for time spent in custody.

D. **Certified Juveniles:** When a juvenile has been referred to the district court for trial as an adult pursuant to Minn. Stat. § 260.125, the sentences provided in the sentencing guidelines apply with the same presumptive force as for offenders age 18 or over at the time of the commission of offenses.

E. **Presentence Mental or Physical Examinations for Sex Offenders:** Under the authority of Minn. R. Crim. P. § 27.03, subd. 1(A), when an offender has been convicted under Minn. Stat. § 609.342, 609.343, 609.344, 609.345, or 609.365, or is convicted under section 609.17 of an attempt to commit an act proscribed by Minn. Stat. § 609.342 or 609.344, the Commission recommends that any state, local, or private agency that the court may deem adequate be ordered to make a physical or mental examination of the offender, as a supplement to the presentence investigation required by Minn. Stat. § 609.115.

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
Unauthorized Use of Motor Vehicle *Possession of Marijuana*	I	12*	12*	12*	13	15	17	19 *18-20*
Theft Related Crimes ($250-$2500) *Aggravated Forgery ($250-$2500)*	II	12*	12*	13	15	17	19	21 *20-22*
Theft Crimes ($250-$2500)	III	12*	13	15	17	19 *18-20*	22 *21-23*	25 *24-26*
Nonresidential Burglary *Theft Crimes (over $2500)*	IV	12*	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	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Criminal Sexual Conduct 1st Degree *Assault, 1st Degree*	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree *Murder, 2nd Degree (felony murder)*	IX	105 *102-108*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *195-215*	230 *218-242*
Murder, 2nd Degree (with intent)	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

V. OFFENSE SEVERITY REFERENCE TABLE

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

X	Adulteration - 609.687,subd. 3(1) Murder 2 - 609.19(1)
IX	Murder 2 - 609.19(2) Murder 3 - 609.195
VIII	Assault 1 - 609.221 Criminal Sexual Conduct 1 - 609.342 Kidnapping (w/great bodily harm) - 609.25, subd. 2(2) Manslaughter 1 - 609.20(1) & (2)
VII	Aggravated Robbery - 609.245 Arson 1 - 609.561 Burglary 1 - 609.582, subd.1(b) & (c) Criminal Sexual Conduct 2 - 609.343(c), (d), (e), (f), & (h) Criminal Sexual Conduct 3 - 609.344(c), (d), (g), (h), (i), & (j) Fleeing Peace Officer (resulting in death) - 609.487, subd. 4(a) Kidnapping (not in safe place) - 609.25, subd. 2(2) Manslaughter 1 - 609.20(3) Manslaughter 2 - 609.205(1)
VI	Arson 2 - 609.562 Assault 2 - 609.222 Burglary 1 - 609.582,subd. 1(a) Criminal Sexual Conduct 2 - 609.343(a), (b), & (g) Criminal Sexual Conduct 4 - 609.345(c), (d), (g), (h), (i), & (j) Escape from Custody - 609.485, subd. 4(4) Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b) Kidnapping - 609.25, subd. 2(1) Precious Metal Dealers, Receiving Stolen Goods (over $2,500) - 609.53, subd. 1(a) Precious Metal Dealers, Receiving Stolen Goods (all values) - 609.53, subd. 3(a) Receiving Stolen Goods (over $2,500) - 609.525; 609.53 Sale of Hallucinogens or PCP - 152.15, subd. 1(2) Sale of Heroin - 152.15, subd. 1(1) Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(1)
V	Burglary 2 - 609.582,subd.2 (a) & (b) Criminal Vehicular Operation - 609.21, subd. 1 Criminal Sexual Conduct 3 - 609.344(b), (e), & (f) Manslaughter 2 - 609.205(2), (3), & (4) Perjury - 609.48, subd. 4(1) Possession of Incendiary Device -299F.79; 299F.80,subd.1;299F.811; 299F.815; 299F.82,subd.1 Receiving Profit Derived from Prostitution - 609.323, subd. 1 Receiving Stolen Goods ($1000 - $2500) - 609.525; 609.53 Simple Robbery - 609.24 Solicitation of Prostitution - 609.322, subd. 1 Tampering w/Witness - 609.498, subd. 1

Accidents - 169.09, subd.14 (a) (1)
Adulteration - 609.687, subd. 3 (2)
Assault 3 - 609.223
Bribery - 609.42; 90.41; 609.86
Bring Contraband into State Prison - 243.55
Bring Dangerous Weapon into County Jail - 641.165, subd. 2(b)
Burglary 2 - 609.582, subd.2 (c) & (d)
Burglary 3 - 609.582, subd. 3
Criminal Sexual Conduct 4 - 609.345(b), (e), & (f)
False Imprisonment - 609.255, subd. 3
Fleeing Peace Officer (substantial bodily harm) - 609.487, subd. 4(c)
Malicious Punishment of Child - 609.377
Negligent Fires - 609.576(a)

IV

Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4(2)
Precious Metal Dealers, Receiving Stolen Goods ($150-$2,500) - 609.53, subd. 1(a)
Precious Metal Dealers, Receiving Stolen Goods (over $2,500) - 609.53, subd. 2(a)
Receiving Stolen Goods ($301-$999) - 609.525; 609.53
Sale of Cocaine - 152.15, subd. 1(1)
Security Violations (over $2500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
Tax Evasion - 290.53, subds. 4 & 8
Tax Withheld at Source; Fraud (over $2,500) -290.92 subd. 25 (5) & (12); 290A.11, subd. 2
Terroristic Threats - 609.713, subd. 1
Theft Crimes - Over $2,500 *(See Theft Offense List)*
Theft from Person - 609.52
Theft of Controlled Substances - 609.52, subd. 3(1)
Use of Drugs to Injure or Facilitate Crime - 609.235

Accidents - 169.09, subd. 14 (a) (2)
Aggravated Forgery (over $2,500) - 609.625
Arson 3 - 609.563
Coercion - 609.27, subd. 1(1)
Coercion (over $2,500) - 609.27, subd. 1(2), (3), (4), & (5)
Criminal Vehicular Operation - 609.21, subd. 2
Damage to Property - 609.595, subd. 1(1)
Dangerous Trespass - 609.60; 609.85(1)
Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1(b)
Escape from Custody - 609.485, subd. 4(1)
False Imprisonment - 609.255, subd. 2

III

Negligent Discharge of Explosive - 299F.83
Possession of Burglary Tools - 609.59
Possession of Hallucinogens or PCP - 152.15, subd. 2(2)
Possession of Heroin - 152.15, subd. 2(1)
Possession of Remaining Schedule I & II Narcotics - 152.15, subd. 2(1)
Possession of Shoplifting Gear - 609.521
Precious Metal Dealers, Receiving Stolen Goods (less than $150) - 609.53, subd. 1(a)
Precious Metal Dealers, Receiving Stolen Goods ($150-$2,500) - 609.53, subd. 2(a)
Prostitution (Patron) - 609.324, subd. 1
Receiving Profit Derived from Prostitution - 609.323, subd. 2
Sale of Remaining Schedule I, II, & III Non-narcotics - 152.15, subd. 1(2)

Security Violations (under $2500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
Solicitation of Prostitution - 609.322, subd. 2
Tax Withheld at Source; Fraud ($301-$2,500) - 290.92, subd. 25(5) & (12); 290A.11, subd. 2

III

Tear Gas & Tear Gas Compounds - 624.731, subd. 3(b)
Theft Crimes - $250-$2,500 *(See Theft Offense List)*
Theft of Controlled Substances - 609.52, subd. 3(2)
Theft of a Firearm - 609.52, subd. 3(3) (e)
Theft of Public Records - 609.52
Theft Related Crimes - Over $2,500 *(See Theft Related Offense List)*

Accidents - 169.09, subd. 14 (b) (1)
Aggravated Forgery ($250-$2,500) - 609.625
Aggravated Forgery (misc) (non-check) - 609.625; 609.635; 609.64
Coercion ($300-$2,500) - 609.27, subd. 1(2), (3), (4), & (5)
Damage to Property - 609.595, subd.1(2) & (3)
Negligent Fires (damage greater than $10,000) - 609.576(b)(3)

II

Precious Metal Dealers, Receiving Stolen Goods (less than $150) - 609.53, subd. 2(a)
Precious Metal Dealers, Regulatory Provisions - 325F.73
Riot - 609.71
Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(2)
Sale of a Schedule IV Substance - 152.15, subd. 1(3)
Terroristic Threats - 609.713, subd. 2
Theft-Looting - 609.52
Theft Related Crimes - $250-$2,500 *(See Theft Related Offense List)*

Accidents - 169.09, subd. 14 (b) (2) (3)
Assault 4 - 609.2231
Aggravated Forgery (Less than $250) - 609.625
Aiding Offender to Avoid Arrest - 609.495
Depriving Another of Custodial or Parental Rights - 609.26
Forgery - 609.63; and Forgery Related Crimes *(See Forgery Related Offense List)*
Fraudulent Procurement of a Controlled Substance - 152.15, subd. 3
Leaving State to Evade Establishment of Paternity - 609.31

I

Nonsupport of Wife or Child - 609.375, subds. 2, 3, & 4
Possession of Cocaine - 152.15, subd. 2(1)
Possession of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 2(2)
Possession of Remaining Schedule I, II & III Non-narcotics - 152.15, subd. 2(2)
Possession of a Schedule IV Substance - 152.15, subd. 2(3)
Sale of Simulated Controlled Substance, 152.097; 152.15, subd. 2b
Selling Liquor that Causes Injury - 340.70
Solicitation of Prostitution - 609.322, subd. 3
Unauthorized Use of Motor Vehicle - 609.55

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES ($250-$2,500 and over $2,500) in the Offense Severity Reference Table.

Altering Serial Number
609.52, subd. 2(10)(11)

Computer Damage
609.88

Computer Theft
609.89

Diversion of Corporate Property
300.60

Embezzlement of Public Funds
609.54

Failure to Pay Over State Funds
609.445

Permitting False Claims Against Government
609.455

Rustling and Livestock Theft
609.551

Theft
609.52, subd. 2(1)

Theft by Soldier of Military Goods
192.36

Theft by Trick
609.52, subd. 2(4)

Theft of Public Funds
609.52

Theft of Trade Secret
609.52, subd. 2(8)

Theft Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT RELATED CRIMES ($250-$2,500 and over $2,500) in the Offense Severity Reference Table.

Defeating Security on Personalty
609.62

Defeating Security on Realty
609.615

Defrauding Insurer
609.611

Federal Food Stamp Program
393.07, subd.10

Fraud in Obtaining Credit
609.82

Fraudulent Long Distance Telephone Calls
609.785

Medical Assistance Fraud
609.466

Presenting False Claims to Public Officer or Body
609.465

Refusing to Return Lost Property
609.52, subd. 2(6)

Taking Pledged Property
609.52, subd. 2(2)

Temporary Theft
609.52, subd. 2(5)

Theft by Check
609.52, subd. 2(3)

Theft of Cable TV Services
609.52, subd. 2(12)

Theft of Leased Property
609.52, subd. 2(9)

Theft of Services
609.52, subd. 2(13)

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

Unauthorized Use of Credit Card
609.52, subd. 2(3)

Wrongfully Obtaining Assistance
256.98

Forgery Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the FORGERY and FORGERY RELATED CRIMES in the Offense Severity Reference Table.

Altering Livestock Certificate
35.824

Altering Packing House Certificate
226.05

Destroy Or Falsify Private Business Record
609.63, subd. 1(5)

Destroy Or Falsify Public Record
609.63, subd. 1(6)

Destroy Writing To Prevent Use At Trial
609.63, subd. 1(7)

False Bill Of Lading
228.45; 228.47; 228.49; 228.50; 228.51

False Certification By Notary Public
609.65

False Information - Certificate of Title Application
168A.30

False Membership Card
609.63, subd. 1(3)

False Merchandise Stamp
609.63, subd. 1(2)

Fraudulent Statements
609.645

Obtaining Signature By False Pretense
609.635

Offer Forged Writing At Trial
609.63, subd. 2

Use False Identification
609.63, subd. 1(1)

DEFINITION OF TERMS

Presumptive Fixed Sentences are those sentences provided in the sentencing guidelines Grid. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics. They are fixed because anyone committed to the custody of the Commissioner of Corrections will serve the duration provided in the appropriate cell of the sentencing guidelines Grid, less good time, before release (provided the judge does not depart from the presumptive sentence).

Departures from the presumptive fixed sentence occur when the judge gives a sentence that differs from that provided in the sentencing guidelines Grid. When substantial and compelling aggravating or mitigating circumstances exist, the judge may depart from the presumptive sentence and provide any sentence authorized by law. When departing from the presumptive sentence, the judge must provide written reasons which articulate the substantial and compelling circumstances, and which demonstrate why the sentence given is more appropriate or fair than the presumptive sentence.

Good Time will reduce the term of imprisonment one day for every two days of good behavior for those committed to the Commissioner of Corrections following conviction of crimes which occurred on or after May 1, 1980. Good time earned accrues to a period of supervised release. Earned good time is vested, and cannot be taken away for misconduct. Earning of future good time may be restricted upon conviction for disciplinary violations promulgated by the Commissioner of Corrections.

Term of Imprisonment is the length of the prison sentence reduced by earned good time for those committed to the Commissioner of Corrections for crimes occurring on or after May 1, 1980. When such an offender is committed, the sentence and the term of imprisonment are the same; as the offender earns good time, the sentence remains the same, but the term of imprisonment is shortened by the amount of good time earned.

Supervised Release is a period of mandatory community supervision following the end of the term of imprisonment for offenders committed to the custody of the Commissioner of Corrections for offenses occurring on or after May 1, 1980. The period of supervised release equals the amount of good time earned. The Commissioner of Corrections establishes conditions which the offender must obey during supervised release, and if those conditions are violated, the Commissioner of Corrections may revoke the supervised release and return the offender to prison for a period not to exceed the time left on the sentence.

Day Fines are a monetary penalty assessed on an equality formula determined by the seriousness of the offense and the offender's financial status — i.e., a burglary conviction may be assigned a value of "50 day fines"; the annual income of an offender with earnings of $20,000 would be reduced to a 'one-tenth of one percent' per diem figure of $20, and would be assessed a "day fine" penalty of $1,000, whereas an offender with annual earnings of $10,000, based on the same formula, would be assessed a penalty of $500.

Community Work Orders are a form of restitution. They are services to be performed by the offender to the community at large for a specified period of time as directed by the judge. For example, a lawyer may be directed to provide one day per week of free legal services to the community for a period of five years; or a youth may be directed to rake leaves and/or shovel snow two days per week for the elderly in the community for a period of one year.

Stay of Imposition/Stay of Execution - There are two steps in sentencing--the imposition of a sentence, and the execution of the sentence which was imposed. The imposition of a sentence consists of pronouncing the sentence to be served in prison (for example, three years imprisonment). The execution of an imposed sentence consists of transferring the felon to the custody of the Commissioner of Corrections to serve the prison sentence. A stayed sentence may be accomplished by either a stay of imposition or a stay of execution.

If a stay of imposition is granted, the imposition (or pronouncement) of a prison sentence is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions until that date, the case is discharged, and for civil purposes (employment applications, etc.) the offender has a record of a misdemeanor rather than a felony conviction.

If a stay of execution is granted, a prison sentence is pronounced, but the execution (transfer to the custody of the Commissioner of Corrections) is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions, the case is discharged, but the offender continues to have a record of a felony conviction.

FELONIES

STATUTE	OFFENSE	SEVERITY LEVEL
3.191	Altering engrossed bill	*
35.824	Altering Livestock Certificate	1
80A.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation - Over $2,500	4
80A.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation - Under $2,500	3
90.41 subd. 1	Bribery - State Appraiser and Scaler	4
145.412	Abortion	*
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Cocaine	4
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Heroin	6
152.09 subd. 1(1) or 152.15 subd. 1(1)	Sale of Remaining Schedule I & II Narcotics	6
152.09 subd. 1(1) or 152.15 subd. 1(2)	Sale of Hallucinogens or PCP (Angel Dust)	6
152.09 subd 1(1) or 152.15 subd. 1(2)	Sale of Marijuana/Hashish/Tetrahydrocannabinols	2
152.09 subd. 1(1) or 152.15 subd. 1(2)	Sale of Remaining Schedule I, II, & III Nonnarcotics	3
152.09 subd. 1(1) or 152.15 subd. 1(3)	Sale of a Schedule IV Substance	2
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Cocaine	1
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Heroin	3
152.09 subd. 1(2) or 152.15 subd. 2(1)	Possession of Remaining Schedule I or II Narcotics	3
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Hallucinogens or PCP (Angel Dust)	3
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Marijuana/Hashish/Tetrahydrocannabinols	1
152.09 subd. 1(2) or 152.15 subd. 2(2)	Possession of Remaining I, II, & III Nonnarcotics	1

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
152.09 subd. 1(2) or 152.15 subd. 2(3)	Possession of Schedule IV Substance	1
152.09 subd. 2(1)(2)(3) or 152.15 subd. 3	Fraudulent Procurement of a Controlled Substance	1
152.097 or 152.15 subd. 2(b)	Sale of Simulated Controlled Substance	1
168A.30	False Information - Certificate of Title Application	1
169.09 subd.14(a)(1)	Accidents - Resulting in Death	4
169.09 subd. 14(a)(2)	Accidents - Substantial Bodily Harm	3
169.09 subd. 14(b)(1)	Accidents - Resulting in Death	2
169.09 subd. 14(b)(2)(3)	Accidents - Great or Substantial Bodily Harm	1
192.36	Theft by Soldier of Military Goods - Over $2,500	4
192.36	Theft by Soldier of Military Goods - $150-$2,500	3
226.05	Altering Packing House Certificate	1
228.45, 49-51	False Bill of Lading	1
243.55	Bringing Contraband into State Prison	4
256.98	Welfare Fraud - Over $2,500	3
256.98	Welfare Fraud - $150-$2,500	2
290.53 subd. 4	Perjury	4
290.53 subd.4, 8	Tax Evasion	4
290.92 subd.25(5),(12) 290A.11,subd. 2	Tax Withheld at Source (over $2500)	4
290.92 subd.25(5) & (12); 290A.11 subd.2	Tax Withheld at Source; Fraud($301-$2500)	3
297A.08	Sales After Revocation of Permit	*
299F.80, subd.1	Possession of Explosives Without Permit	5
299F.811	Possession of Explosives for Crime	5
299F.815 all sections	Possession of Chemical Igniting Device/Molotov Cocktail	5
299F.83	Negligent Discharge of Explosive	3
300.60	Diversion of Corporate Property - Over $2,500	4
300.60	Diversion of Corporate Property - $150-$2,500	3
300.61	False Statement by Corporate Officer	4
325F.73	Precious Metal Dealers, Regulatory Provisions	2
340.70	Selling Liquor	1
343.31	Animal Fighting	*
393.07 subd.10	Federal Food Stamp Program-over $2,500	3
393.07	Federal Food Stamp Program - $150-$2,500	2
609.19(1)	Murder in the Second Degree	10

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
609.19(2)	Murder in the Second Degree	9
609.195 all sections	Murder in the Third Degree	9
609.20(1)(2)	Manslaughter in the First Degree	8
609.20(3)	Manslaughter in the First Degree	7
609.205(1)	Manslaughter in the Second Degree - Culpable Negligence	7
609.205(2)(3)(4)	Manslaughter in the Second Degree - Hunting Accident	5
609.21 subd. 1	Criminal Vehicular Operation Resulting in Death	5
609.21 subd. 2	Criminal Vehicular Operation Resulting in Substantial Bodily Harm	3
609.215	Aiding Suicide	*
609.221	Assault in the First Degree - Great Bodily Harm	8
609.222	Assault in the Second Degree - Dangerous Weapon	6
609.223	Assault in the Third Degree - Substantial Bodily Harm	4
609.2231	Assault in the Fourth Degree - Peace Officer	1
609.235	Use of Drugs to Injure or Facilitate Crime	4
609.24	Simple Robbery	5
609.245	Aggravated Robbery	7
609.25 subd. 2(1)	Kidnapping - Safe Release/No Great Bodily Harm	6
609.25 subd. 2(2)	Kidnapping - Great Bodily Harm OR	8
609.25 subd. 2(2)	Kidnapping - Unsafe Release	7
609.255 subd. 2	False Imprisonment - Restraint	3
609.255 subd. 3	False Imprisonment - Substantial Bodily Harm	4
609.26	Depriving Another of Custodial or Parental Rights	1
609.27 all sections	Coercion - Prop. Value over $2,500/Threat Bodily Harm	3
609.27 subd. 1(2)(3)(4)(5)	Coercion - Prop. Value $300-$2,500	2
609.31	Leaving the State to Evade Establishment of Paternity	1
609.322 subd. 1 all sections	Solicitation of Prostitution	5
609.322 subd. 2 all sections	Solicitation of Prostitution	3
609.322 subd. 3 all sections	Solicitation of Prostitution	1
609.323 subd. 1	Receiving Profit Derived from Prostitution	5
609.323 subd. 2	Receiving Profit Derived from Prostitution	3
609.324 subd. 1 all section	Prostitution (Patron)	3
609.342 all sections	Criminal Sexual Conduct in the First Degree	8

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
609.343(a)(b)(g)	Criminal Sexual Conduct in the Second Degree	6
609.343(c)(d)(e)(f)(h)	Criminal Sexual Conduct in the Second Degree	7
609.344(a)	Criminal Sexual Conduct, Third Degree (By definition the perpetrator must be a juvenile)	*
609.344(b)(e)(f)	Criminal Sexual Conduct in the Third Degree	5
609.344(c)(d)(g)(h)(i)(j)	Criminal Sexual Conduct in the Third Degree	7
609.345(a)	Criminal Sexual Conduct, Fourth Degree (By definition the perpetrator must be a juvenile.)	*
609.345(b)(e)(f)	Criminal Sexual Conduct in the Fourth Degree	4
609.345(c)(d)(g)(h)(i)(j)	Criminal Sexual Conduct in the Fourth Degree	6
609.355	Bigamy	*
609.365	Incest	*
609.375 subd.2;subd.3;subd.4	Nonsupport of Wife or Child	1
609.377	Malicious Punishment of Child	4
609.385	Treason	*
609.39	Misprision of Treason	*
609.395	Obstructing Military Forces	*
609.405	Criminal Syndicalism	*
609.42 subd.1 all sections	Bribery	4
609.425	Corrupting Legislator	*
609.445	Failure to Pay Over State Funds - Over $2,500	4
609.445	Failure to Pay Over State Funds - $150-$2,500	3
609.455	Permitting False Claims Against Government-Over $2,500	4
609.455	Permitting False Claims Against Government-$150-$2,500	3
609.465	Presenting False Claims to Public Officer or Body-Over $2,500	3
609.465	Presenting False Claims to Public Officer or Body-$150-$2,500	2
609.466	Medical Assistance Fraud-Over $2,500	3
609.466	Medical Assistance Fraud-$150-$2,500	2
609.48 subd.1; subd.2; subd.3; subd.4(1)	Perjury - Felony Trial	5
609.48 subd.1; subd.2; subd.3; subd. 4(2)	Perjury-Other Trial	4
609.485 all sections except subd.4(4)	Escape	3
609.485 subd.4(4)	Escape with Violence	6

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
609.487 subd. 4(a)	Fleeing Peace Officer (resulting in death)	7
609.487 subd. 4(b)	Fleeing Peace Officer (great bodily harm)	6
609.487 subd. 4(c)	Fleeing Peace Officer (substantial bodily harm)	4
609.495 all sections	Aiding an Offender to Avoid Arrest	1
609.498 subd. 1	Tampering with a Witness	5
609.52 all sections	Theft of Public Funds - Over $2,500	4
609.52 all sections	Theft of Public Funds - $150-$2,500	3
609.52 all sections	Theft from Person	4
609.52 all sections	Theft of Public Records	3
609.52 all sections	Theft-Looting	2
609.52 subd.2(1)(4)(8)(10)(11)	Theft Crimes-Over $2,500	4
609.52 subd.2(1)(4)(8)(10)(11)	Theft Crimes-$250-$2,500	3
609.52 subd. 3(2)	Theft of Controlled Substances	3
609.52 subd.3(3)(e)	Theft of Firearm	3
609.52 subd.2(2)(3)(5)(6)(9); (12)(i)(ii)(13)	Theft Related Crimes-Over $2,500	3
609.52 subd.2(2)(3)(5)(6)(9); (12)(i)(ii)(13)	Theft Related Crimes-$250-$2,500	2
609.521	Possession of Shoplifting Gear	3
609.525 all sections	Bringing Stolen Goods into State - Over $2,500	6
609.525 all sections	Bringing Stolen Goods into State - $1,000-$2,500	5
609.525 all sections	Bringing Stolen Goods into State - $301-$999	4
609.53 all sections	Receiving Stolen Goods - Over $2,500	6
609.53 all sections	Receiving Stolen Goods - $1,000-$2,500	5
609.53 all sections	Receiving Stolen Goods - $301-$999	4
609.53 subd.1(a)	Precious Metal Dealers (over $2,500-known to be stolen)	6
609.53 subd.3(a)	Precious Metal Dealers (all values-second or subsequent)	6
609.53 subd.1(a)	Precious Metal Dealers ($150-$2,500-known to be stolen)	4
609.53 subd.2(a)	Precious Metal Dealers (over $2,500-reason to believe stolen)	4
609.53 subd.1(a)	Precious Metal Dealers (less than $150-known to be stolen)	3
609.53 subd.2(a)	Precious Metal Dealers ($150-$2,500-reason to be stolen)	3
609.53 subd.2(a)	Precious Metal Dealers (less than $150-reason to believe stolen)	2

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
609.54 all sections	Embezzlement of Public Funds - Over $2,500	4
609.54 all sections	Embezzlement of Public Funds - $150-$2,500	3
609.55 all sections	Unauthorized Use of a Motor Vehicle	1
609.551 all sections	Rustling of Livestock - Over $2,500	4
609.551 all sections	Rustling of Livestock - $150-$2,500	3
609.561 all sections	Arson in the First Degree	7
609.562	Arson in the Second Degree	6
609.563 all sections	Arson in the Third Degree	3
609.576(a)	Negligent Fires - Great Bodily Harm	4
609.576(b)(3)	Negligent Fires - Damage Exceeds $10,000	2
609.582 subd. 1(b)(c)	Burglary First Degree w/Weapon or Assault	7
609.582 subd.1(a)	Burglary First Degree -of Occupied Dwelling	6
609.582 subd.2(a)(b)	Burglary, Second Degree, Dwelling/Bank	5
609.582 subd.2(c)(d)	Burglary, Second Degree, of Pharmacy/Tool	4
609.582 subd. 3	Burglary, Third Degree, Non-Residential	4
609.59	Possession of Burglary Tools	3
609.595 subd.1(1)	Damage to Property - Risk Bodily Harm	3
609.595 subd. 1(2)(3)	Damage to Property - Over $300/Public Utility	2
609.60 all sections	Dangerous Trespasses and Other Acts	3
609.611 all sections	Defrauding Insurer - Over $2,500	3
609.611 all sections	Defrauding Insurer - $150-$2,500	2
609.615 all sections	Defeating Security on Realty - Over $2,500	3
609.615 all sections	Defeating Security on Realty - $150-$2,500	2
609.62 all sections	Defeating Security on Personalty - Over $2,500	3
609.62 all sections	Defeating Security on Personalty - $150-$2,500	2
609.625 subds. 1(1);2;3	Aggravated Forgery - Over $2,500	3
609.625 subds. 1(1);2;3	Aggravated Forgery - $250-$2,500	2
609.625 subds. 1(1);2;3	Aggravated Forgery - Less than $250	1
609.625 subd.1(2)(3)(4)(5)(6)(7); subd.2; subd.3	Aggravated Forgery - Non-Check	2
609.63 all sections	Simple Forgery	1
609.635	Obtaining Signature by False Pretense	2
609.64	Recording, Filing of Forged Instrument	2

* Unranked

STATUTE	OFFENSE	SEVERITY LEVEL
609.645	Fraudulent Statements	1
609.65	False Certification by Notary Public	1
609.67 subd.2	Possession/Ownership of Machine and Short Barreled Shotguns	3
609.687 subd. 3(1)	Adulteration Resulting in Death	10
609.687 subd. 3(2)	Adulteration Resulting in Bodily Harm	4
609.71	Riot	2
609.713 subd.1	Terroristic Threats-Violence Threat/Evacuation	4
609.713 subd.2	Terroristic Threats - Bomb Threat	2
609.785 all sections	Fraudulent Long Distance Telephone Calls - Over $2,500	3
609.785 all sections	Fraudulent Long Distance Telephone Calls - $150-$2,500	2
609.82 all sections	Fraud in Obtaining Credit - Over $2,500	3
609.82 all sections	Fraud in Obtaining Credit - $150-$2,500	2
609.85 subd.1	Crimes Against Railroad Employees	3
609.86	Bribery	4
617.20	Abortion	*
617.22	Abortion	*
617.246	Obscenity re Minors	*
624.713 subd.1(b)	Certain Persons Not to Have Pistols - Felons	3
624.731 subd. 3(b)	Tear Gas and Tear Gas Compounds	3
641.165 subd.2(b)	Bring Dangerous Weapon into County Jail	4

* Unranked

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.