III. MODIFICATIONS TO THE SENTENCING GUIDELINES EFFECTIVE AUGUST 1, 1986

Section B (Criminal History) is modified as follows:

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 or for which a stay of imposition of sentence was given 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~~ d. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of ~~ten~~ fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current 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.~~

Section B.3. (Criminal History) is modified as follows:

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~~ c. A prior misdemeanor or gross 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.

Changes to Section V. Offense Severity Reference Table effective August 1, 1986 are as follows:

VI	Price Fixing/Collusive Bidding - 325D.53, subd. 1 (2) (a) Sale of Cocaine - 152.15, subd. 1(1) (2)
V	Price Fixing/Collusive Bidding - 325D.53, subd. 1(1), and subd. 1(2), (b) and (c)
IV	~~Sale of Cocaine - 152.15, subd. 1(1)~~ Receiving Stolen Property (firearm) - 609.53, subd. 1(4) Sports Bookmaking - 609.75, subd. 7
III	Possession of Cocaine - 152.15, subd. 2(1)
I	~~Possession of Cocaine - 152.15, subd. 2(1)~~

Change to *Theft Offense List* effective August 1, 1986 is as follows:

False Declaration of Claim
471.392

Commentary Modifications to the Decay Factor
Effective August 1, 1986

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 or for which a stay of imposition of sentence was given before the current sentencing. In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, the offender would receive one point. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same judge, sentencing shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in II.A.02.*

II.B.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.*~~

The decision to stay execution of sentence rather than to stay imposition of sentence as a means to a probationary term following a felony conviction is discretionary with the judge. Considerable disparity appears to exist in the use of these options. In the case of two similar offenders it is not uncommon for one to receive a stay of execution and another to receive the benefit of a stay of imposition. There is also geographical disparity with stays of imposition much less common in Ramsey County, for example, than in most other counties. As a result of the disparity that exists in the use of stays of imposition, the Commission determined that stays of execution and stays of imposition shall be treated the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.

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 and stays of imposition, but also the* ~~*time interval between those sentences and subsequent offenses*~~ *age of the sentences and stays of imposition. 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-five year period. The Commission decided that ~~after a significant period of offense-free living~~, the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition would not be counted in criminal history score computation if ~~ten~~ fifteen years had elapsed ~~between~~ from the date of discharge ~~from~~ or expiration of that sentence or stay of imposition to ~~and~~ the date of the current offense. ~~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.~~ While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application.

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. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. ~~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.D.202. *An aggravated sentence would be appropriate when 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 even if the prior felony offense had decayed in accordance with section II.B.1.d.*