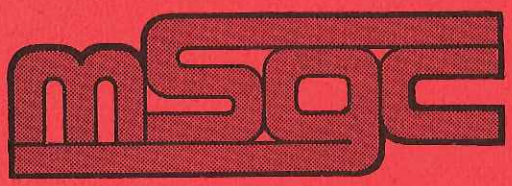
Minnesota Sentencing Guidelines Commission



Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January, 1988

TABLE OF CONTENTS

I. 1987 Guidelines Modifications 1

A. Modifications that received legislative review 1

B. Ranking of new or amended crimes 2

C. Other modifications not requiring legislative review. 6

II. 1988 Proposed Guidelines Modifications Requiring Prior Legislative Review 7

Ranking for an inadvertently unranked offense. 7

III. Proposed Guidelines Modifications not yet Adopted by the Commission 7

A. Criminal history score intervention policy 7

B. Extensive prior felony record 9

IV. Other Activities 10

A. Interim legislative hearings 10

B. Nonimprisonment Guidelines. 10

C. Judicial training and training planned for probation officers 11

V. 1986 Data Highlights 12

APPENDIX A: 1987 Modifications 18

A. Effective December 16, 1987 18

B. Effective August 1, 1987 19

C. Effective April 10, 1987 23

APPENDIX B: 1988 Proposed Modifications 24

APPENDIX C: Language for Proposed Modifications not yet Adopted by the Commission 25

I. 1987 Guidelines Modifications

A. Modifications that received legislative review

The Commission proposed a few minor changes in 1986 that required prior legislative review, along with a major change to the durations for Severity Level X offenses and for Attempted First Degree Murder. These proposed modifications were presented in the 1986 Report to the Legislature and became effective August 1, 1987.

1. The Commission increased the durations for Severity Level X; e.g., Intentional 2nd Degree Murder, from 120 months at criminal history score zero to 216 months. Twenty additional months were added to the base duration of 216 months for every increment in the criminal history score. The Commission believed that durations were too low and not proportional to the seriousness of the offense. The new durations are more proportional with first degree murder which under a mandatory life sentence has a minimum term of imprisonment of 17 1/2 years (the 216 month presumptive sentence for severity level X at the zero criminal history score is a 12 year term of imprisonment when all good time is earned). The durations for Attempted First Degree Murder were also increased substantially to maintain proportionality with the durations for Severity Level X. The impact of these increased durations on prison populations had been reported to the legislature as around 40 to 70 beds per year. The Commission believes that while this impact is significant, the increased durations do support the guideline policy to reserve prison space for the serious person offenders.

2. The monetary ranges for Theft Crimes and Theft Related Crimes were clarified to include all felony level thefts for amounts of $2,500 or less. The ranges had previously read $250 - $2,500 as this corresponded to the general theft statutes. However, it was realized that some theft crimes are felonies regardless of the amount involved.

3. The Commission ranked a number of offenses inadvertently excluded from the guidelines. Voting Violations, Minn. Stats. 201.014, 201.016, 201.054 were ranked at Severity Level I. Financial Transaction Card Fraud, Minn. Stat. § 609.821, subd. 2(3) & (4) were also ranked at Severity Level I, as these offenses do not involve monetary loss, but rather the selling, transferring, or the intent to use a card without the consent of the owner. The remaining clauses (1),(2),(5),(6), and (7) that do involve monetary loss were ranked as Theft Related Offenses. (It should be noted that the 1987 Legislature amended Minn. Stat. § 609.821 and there were subsequent nonsubstantive ranking modifications which are listed in section I.B. of this report.)

B. Ranking of new or amended crimes

The Commission ranked numerous crimes created and amended by the legislature in the 1987 session, and these are outlined below:

1. The legislature in 1987, again, amended the statutes regarding the sale of certain drugs, basically in response to some of the Commission's recommendations stated in the 1986 Report to the Legislature. While the legislature defines the law and establishes the statutory limits of sentencing, it is the role of the Commission to rank, within the construct of the sentencing guidelines, any new and amended laws. Thus, the substantive changes to the law regarding sale of certain controlled substances required that the Commission rank these offenses. An historical overview is provided below to clarify this complex and confusing issue.

   The Commission made numerous changes to the sentencing guidelines in previous years to accommodate harsher sentencing for major and repeat drug dealers.

   1) In 1981, the Commission added to the nonexclusive list of reasons for departure, a set of circumstances that might define a major drug dealer. A judge could depart from the sentencing guidelines if it were established that two or more of these circumstances existed. The Commission, as well as law enforcement officials, believed that a departure from the guidelines was appropriate for major drug dealers because they are not the typical drug offender.

   2) In the 1983 Report to the Legislature, the Commission recommended that the ambiguous language in the second or subsequent mandatory minimum law for sale of drugs be clarified to address the repetitive drug offender. The legislature did not amend the statute; therefore, the Commission modified the guidelines to presume imprisonment for second or subsequent sale of heroin, hallucinogens, PCP, and cocaine. This modification became effective August 1, 1985.

   3) The Commission increased the severity level for possession and sale of cocaine from severity levels I and IV to severity levels III and VI, respectively, as a result of a motion by Commission member Dan Cain, a citizen representative. This modification, which became effective August 1, 1986, was adopted to reflect the understanding that cocaine is more similar in effect to heroin, hallucinogens, and PCP than it is to marijuana.

   In the 1986 legislative session, the drug statutes were amended to differentiate major drug offenses based on the quantity of the drug involved. The statutory maximums were increased from 15 to 20 years. An offender convicted of sale of seven or more grams or ten or more dosage units of schedule I or II narcotics, PCP and other hallucinogens (not including marijuana) would come under the definition of this law. The Commission ranked these new drug offenses at severity level VII, where imprisonment is presumed regardless of the criminal history, because they believed this was the legislative intent. The Commission had three major concerns, however, that they believed the legislature should address to better achieve the goal of providing harsher sentences for major drug dealers yet maintaining

proportionality within the sentencing guidelines. These concerns and other legislative suggestions are outlined below:

1) The 1986 language did not specify whether the quantity of seven grams referred to the pure controlled substance only, or to the entire mixture containing the controlled substance. Despite apparent legislative intent to have the quantity refer to a mixture, the Commission believed it was important to specifically state "mixture" in the statute.

2) The Commission did not believe that the statute identified the major drug offense. The quantities described in the statute were too small to differentiate between the casual and large drug traffickers. With respect to proportionality, the Commission agreed, unanimously, that major drug offenders should be placed in scale with aggravated robbers, forceful criminal sexual conduct offenders, and kidnappers. The majority of members also agreed that the "user-seller", who sells relatively small amounts of drugs to his or her circle of acquaintances in order to support his or her own drug use, should have a presumption of a stayed sentence when the offender has no criminal history score. The Commission viewed the new drug law as an effort to increase penalties for the major drug dealer, yet believed that the quantities specified in the statute did not differentiate the major drug dealer. The Commission recommended the following quantities be used: a) one ounce or more of mixture; or b) seven or more grams of pure drug; or c) 200 or more dosage units when not sold by weight.

3) The Commission also recommended that provisions be added to the statute to differentiate the offender who sold drugs to minors or who conspired with or employed a minor to sell drugs.

4) When the legislature passed this law in 1986, they had not received specific information regarding the impact on prison populations of ranking these offenses at severity level seven. The impact was estimated at 88 beds per year.

The legislature, in response to some of the concerns and suggestions by the Commission, amended the drug sale laws in 1987 (for schedule I and II narcotics, PCP, and other hallucinogens not including marijuana) to specify that quantities referred to the mixture of the substance containing the controlled substance. This amended 1987 law was separated into six provisions:

a) the mixture contains three or more grams of cocaine base;

b) the mixture totals ten or more grams aggregated over a 90-day period;

c) PCP or any hallucinogen (not including marijuana) totaling ten or more dosage units;

d) other schedule I or II narcotics totaling 50 or more dosage units;

e) sells a controlled substance to a person under the age of 18;

f) conspires with or employs a person under the age of 18.

The Commission ranked all of the above provisions at severity level VII, although b) was initially left unranked. The Commission ranked a), e), and f) above at severity level VII because they believed that the seriousness of these offenses was

proportional to the other severity level VII offenses. The Commission ranked c) and d) at severity level VII because the Commission had previously ranked them at severity level VII when they were a part of the 1986 law. The Commission initially left b) unranked because they could not reach a consensus on its appropriate ranking.

The majority of Commission members believed that it was not proportional to rank the sale of ten or more grams of cocaine or heroin, aggregated over a 90-day period, at severity level VII. They believed that this quantity did not differentiate the major drug dealer from someone selling drugs to support their own drug use. The members believed that to allow for aggregation of the ten grams made this offense more inclusive than the 1986 version that required seven grams (of perhaps pure drug) without aggregation and, that this was a significant change in the offense definition. The typical offender who would be convicted under this statute would not fit into the same category as those who are convicted of manslaughter, forcible rape, burglary with an assault, and armed robbery. The majority of Commission members believed that departing from the sentencing guidelines would be a more appropriate approach to take in those cases where aggravating factors exist; i.e., the major drug offense factors. It is currently presumptive to commit to prison an offender convicted of a second or subsequent sale of any amount of heroin or cocaine.

There was a lack of consensus, however, regarding the Commission's recognition of legislative intent and its importance in determining the severity level rankings of new and amended offenses. Some members believed that there was clear legislative intent for this offense to be ranked at severity level VII. These members believed that because the intent of the legislature was so clear, it should take precedence over the issue of proportionality. The legislature had heard testimony and received information from the Commission chair and the director, and were fully informed on this issue. The Commission had previously ranked this offense when it was defined as seven or more grams (with no aggregation) at severity level VII, and some members felt that the legislature had acted with the expectation that the ranking would remain the same. Many Commission members were confused, however, as to whether the legislative intent was to have this provision identify major drug dealers.

Other members, while agreeing that the legislature had intended for the Commission to rank this offense at severity level VII, were uncomfortable with basing the decision to rank the offense solely on legislative intent. The legislature created the Commission to make these types of decisions and if in every instance the Commission tried to determine what the legislative intent was and then simply voted in that direction, the question is raised as to what the role of the Commission is.

After a request from Governor Perpich to reconsider a severity level ranking for the unranked offense, the Commission did propose to rank this offense at severity level VII. This proposal was adopted and went into effect on December 16, 1987. While the Commission adopted these rankings on the basis of clear legislative intent, the Commission is concerned with emphasizing legislative intent while ignoring proportionality and truth in sentencing. The Commission was created to make these decisions outside of the political environment of the legislature and in the context of the goals and principles of the sentencing guidelines.

The 1987 Legislature also increased the statutory maximums for all other sale of controlled substances, not included in the provisions discussed above, when the sale was to someone under the age of 18 or if the offender employed or conspired with someone under the age of 18. The Commission ranked these offenses one severity level higher than the current ranking for sale of these drugs.

2. The Commission left unranked the following offenses because it was believed that they would occur relatively infrequently and/or would be highly circumstantial:

   1) Pipeline Safety/Failure to Report - M.S. § 299J.07, subd. 2
   2) Killing a Police Dog - M.S. § 609.596, subd. 1
   3) Hazardous Wastes - M.S. § 609.671
   4) Use of Police Radios During Commission of Crime - M.S. § 609.856

   The Commission also removed Criminal Syndicalism - M.S. § 609.405 from the list of unranked offenses because it was repealed by the legislature.

3. The 1987 Legislature created three new crimes involving the death or injury of someone as a result of controlled substances provided by the offender. The Commission ranked at severity level VIII the offense of Murder 3, unintentionally causing the death of someone by providing them with a schedule I or II controlled substance. They ranked at severity level VII, the offenses of Manslaughter 1, unintentionally causing the death of someone by providing them with a schedule III, IV, or V controlled substance, and Great Bodily Harm Caused by Distribution of Drugs - providing a schedule I or II controlled substance. The Commission believed that even when death did not occur, the presumption of prison would be appropriate given the dangerous nature of schedule I and II controlled substances.

4. The 1987 Legislature added provisions to Criminal Sexual Conduct 3rd Degree and Criminal Sexual Conduct 4th Degree to make it a felony to accomplish sexual penetration or contact by false representation of its purpose; ie, for medical purposes. The Commission ranked these offenses at the same severity levels as when the offense is committed by a psychotherapist: severity level VII for Criminal Sexual Conduct 3rd Degree and severity level VI for Criminal Sexual Conduct 4th Degree.

5. A provision was added to Tampering with a Witness - M.S. § 609.498, subd. 1 that the Commission ranked at severity level V, the same level as all other provisions of witness tampering.

6. The statutory maximums were increased to 20 years for certain "white collar" type felony thefts when the amount involved was more than $35,000. The Commission ranked this offense at severity level VI as it is similar to other serious theft crimes ranked at severity level VI; e.g., Price Fixing/Collusive Bidding.

7. A specific provision was created by the 1987 Legislature to provide for a felony conviction regardless of the value of the motor vehicle. The Commission ranked this offense at severity level IV because they believe theft of a motor vehicle is different from, and more serious than, Unauthorized Use of a Motor Vehicle which is ranked at severity level I. The value of most motor vehicles is more that $2,500 and theft of more that $2,500 is also ranked at severity level IV. The Commission also believes that the creation of this provision, along with a ranking at severity level IV, addresses the problem that certain areas are having with increases in the rate of stolen motor vehicles.

8. The 1987 Legislature increased the lower threshold for felony theft to $500 and created a felony level theft for amounts more than $200 but less than $500 when the offender has been convicted and sentenced within the preceding five years of a related or similar offense. The Commission ranked this offense at severity level III for theft offenses and at severity level II for theft related offenses. A similar provision was added to Damage to Property - M.S. § 609.595, subd. 1 which the Commission ranked at severity level II.

9. The 1987 Legislature created a separate statute for Check Forgery - M.S. § 609.631. The Commission ranked at severity level III - check forgery over $2,500; severity level II - check forgery or more than $200 but less than $2,500; and severity level I - check forgery of no more than $200 where the offender has been convicted and sentenced within the preceding five years for a related or similar offense.

10. The provisions for Financial Transaction Card Fraud - M.S. § 609.821 were also modified to take into account the amount of the transaction. The Commission ranked at severity level III those offenses involving more than $2,500; at severity level II those offenses involving more than $200 but less than $2,500; and also at severity level II those offenses involving not more than $200 but where the offender had been convicted and sentenced within the preceding five years for a related or similar offense.

C. Other modifications not requiring legislative review

The Commission adopted modifications to the commentary that do not require legislative review, as well as a change to the effective date policy for modifications.

1. Commentary was added to clarify that misdemeanor convictions under M.S. § 340A.503 would not be used to compute the criminal history score. This is the offense of consumption/purchase of liquor by a person under the age of 21. The Commission did not believe it was appropriate to consider this offense in the criminal history score because it is not the nature of the crime but the age of the offender that determines the crime. Also, the record of violation cannot be disclosed absent an order by the court.

2. Commentary was added to clarify that offenders who had prior offenses that had been treated pursuant to M.S. § 152.18 could be assigned a custody status point if the offender was still on probation when the current offense was committed. However, a felony point would not be assigned unless a felony sentence was imposed prior to the sentencing on the current offense. (An offender who is treated under M.S. § 152.18 is not adjudicated guilty of the offense; therefore, if probation is successfully completed, there will be no record of the conviction.)

3. The Commission had previously adopted a modification to the sentencing guidelines that addressed the effective date for modifications. This change was effective August 1, 1986 and basically stated that modifications to the Minnesota Sentencing Guidelines and Commentary would be applied to offenders whose date of adjudication of guilt was on or after the specified effective date. Subsequently, the Attorney General's office, prompted by two trial court opinions, advised the Commission that this effective date policy was "an ex post facto law" because it worked to the detriment of the accused. The Commission believed that with the opinion Attorney General's Office and at least two trial judges who ruled that this policy was an ex post facto application of the law, it was important to immediately change the policy. A public hearing was held on April 2, 1987 and on April 9 the language was adopted to read "Modifications to the Minnesota Sentencing Guidelines will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary will be applied to offenders sentenced on or after the specified effective date." As the legislature was still in session, the relevant committees were kept informed of this modification and the reason it was necessary for the modification to become effective immediately. This change was effective April 10, 1987.

II. 1988 Proposed Guidelines Modifications Requiring Prior Legislative Review

Ranking for an inadvertently unranked offense

The Commission realized that no severity level ranking had been assigned to M.S. § 169.09, subd. 14(a)(3) - the offender has caused an accident resulting in substantial bodily harm to any person. The Commission proposes to rank this offense at severity level II. This would be proportional to the other accident violations: a severity level III ranking for when the offender has caused an accident resulting in great bodily harm to any person, and a severity level IV ranking when death results.

III. Proposed Guidelines Modifications not yet Adopted by the Commission

A. Criminal history score intervention policy

As was reported in the 1986 Report to the Legislature, the criminal history score continues to have a greater impact on who goes to prison than was initially projected

under the just deserts philosophy of the guidelines. Criminal history scores can be highly dependent on the charging and plea negotiating practices of the prosecuting attorney and these practices can vary by jurisdiction. This discretion has impacted most heavily on property offenders where the percentage who received presumptive imprisonment under the guidelines in 1986 is more than double that of 1981; 14.1% and 7.0% respectively. While some of this increase is due to a larger proportion of older offenders who have built their criminal history scores by repeated interventions of the criminal justice system, there are a substantial number of property offenders who have built up their criminal history score by having committed one or two crime sprees. 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. Rational sentencing policy requires such trade-offs, to ensure the availability of correctional resources for the most serious offenders.

The Commission has been examining and exploring options for changing the computation of criminal history score to address the problem of the increasing number of property offenders who are recommended a prison sanction. The Commission has proposed a policy to require that an offender receive a certain number of prior interventions by the criminal justice system before an executed sentence is deemed appropriate.

The Commission held a public hearing on December 10, 1987 to hear public testimony on the intervention policy (as well as other proposals). The Commission heard from the County Attorney's Association, the Attorney General's Office, the Minnesota State Sheriff's Association, the Minnesota Police and Peace Officers Association, Hennepin County Attorney's Office, and Ramsey County Corrections. All those that testified were in opposition to the intervention policy, primarily because they believed the policy was an unnecessary complication to the sentencing guidelines. The Commission met on December 15, 1987, and did not adopt the intervention policy at that time but referred it back to the criminal history score subcommittee. The Commission would like to examine the policy further and solicit comments and suggestions from practitioners, particularly probation officers. The Commission remains in support of the intervention concept but would like to simplify its application.

While the Commission has not yet adopted the intervention policy, the Commission believes that this type of change would result in proportionally harsher sanctions for the repeat offender than for the crime spree offender. It would also, to a limited degree, control for the variation in prosecutorial practices for obtaining convictions when an offender has committed multiple offenses. However, the actual criminal history score would be calculated in the same manner. Thus, someone who had committed multiple current offenses but did not have the required number of prior interventions to receive a presumptive imprisonment sentence, would still receive a harsher duration if subsequently revoked than would the offender who had a lower criminal history score.

The proposal states that if the case is contained in a cell below and to the right of the line the sentence should be executed unless any of the following circumstances exist:

1) the current conviction is at severity level I or II and the offender has had less than three prior interventions and the conviction offense does not carry a mandatory minimum sentence; or

2) the current conviction is at severity level III or IV and the offender has had less than two prior interventions and the conviction offense does not carry a mandatory minimum sentence.

An intervention would include all prior felony sentences that are served together during the same time period. If the offender has been sentenced for a new offense that was committed after the previous intervention began, that would constitute a second or subsequent intervention.

It is estimated that about 60 offenders would not be recommended prison under this proposal that would have otherwise. This estimate is expected to be conservative because of the limitations of the current available data. The prison population impact would be a reduction of approximately 60 beds per year; this is also presumed to be a conservative estimate. The Commission believes that the significance of this proposal is that it represents a philosophical statement on the rational use of prison resources and that it differentiates the repeat offender. While this policy has significance in that it supports the principles of the guidelines, it is perhaps fairly modest with respect to its impact on prison populations. If prison populations continue to grow beyond the capacities of current resources, the Commission would be faced with recommending a more drastic change to the sentencing guidelines in order to provide the legislature with the option of not building new prisons.

Minn. Stat. § 244.09, subd. 11, provides that modifications to the sentencing guidelines be submitted to the legislature by January 1 of any year in which the commission wishes to make the change and shall be effective on August 1 of that year, unless the legislature by law provides otherwise. The Commission intends to meet prior to the start of the 1988 legislative session to possibly adopt some form of the intervention policy. However, if the Commission were to adopt this proposal, the submission date of January 1 required for modifications could not be met. Therefore, if the Commission does adopt some form of the intervention policy in January, legislative action would be necessary before the policy could go into effect on August 1, 1988. An alternative would be to delay legislative review until the 1989 legislative session, upon which, absent any action by the legislature, the policy would go into effect on August 1, 1989.

B. Extensive prior felony record

An aggravating factor was proposed by the Commission to be added to the list of nonexclusive reasons for departure. This factor would allow for a departure when the offender had an extensive prior felony record that was not adequately reflected by the sentencing guidelines grid and the offender was currently being sentenced for multiple felony convictions.

This aggravating factor was intended to provide for increased punishment for those offenders for whom consecutive sentencing is not permissive under the sentencing guidelines. The proposal also addresses the situation where an offender has been released on bail yet already has a criminal history of six points. There was concern that these offenders would continue to commit new crimes while out on bail because they recognized that no additional sanctions would be recommended by the guidelines. This proposal would clearly provide the judges the option to depart from the sentencing guidelines if these circumstances exist.

The Commission heard little public testimony with respect to this proposal on the December 10th public hearing. While the Attorney General's Office supported this proposal, the Dakota County Attorney's Office did not because they did not believe that the aggravating factor adequately addressed the problem.

The Commission did not adopt this proposal at the December 15, 1987 meeting, but referred it to the criminal history score subcommittee. The Commission was uncertain whether a specific reason for departure would be necessary because they believed that there were already a number of departure reasons available that the sentencing judge could use in these cases. The Commission believed that the aggravating factor, in addition to being unnecessary, was confusing and complex. If the Commission were to decide to enact some form of this proposal in the future, it would not require legislative review, unless the proposal was modified in such a way that it would directly affect the grid or criminal history score.

IV. Other Activities

A. Interim legislative hearings

The Sentencing Guidelines Subcommittee of the House of Representatives conducted several hearings during the summer and fall of 1987 to solicit comments and suggestions from interested persons regarding the sentencing guidelines. Commission staff attended all of these hearings and presented information to the Subcommittee regarding 1) the impact of criminal history score on the presumption of imprisonment for property offenders; 2) the increasing mitigated dispositional departure rate for serious person offenders; 3) the use of jail as a condition of a stayed sentence; and 4) other general information regarding the sentencing guidelines.

Generally, among those that testified, the comments were positive in regard to the system of sentencing guidelines. However, several witnesses suggested specific changes to improve the sentencing guidelines. Some witnesses expressed a concern over offenders who have extensive criminal history scores and do not receive any additional sanctions for crimes they commit while out on bail. Other witnesses believed the sentence durations were too short generally or that the period of supervised release was too short. The Commission is currently looking at ways to address the concern regarding extensive criminal history scores, see section III. B.

B. Nonimprisonment Guidelines

As was reported in the 1986 Report to the Legislature, the monitoring data demonstrates a serious problem with respect to the increasing use of jail as a condition of a stayed sentence and the lack of uniformity and proportionality. The decision to pronounce a period of jail incarceration as a condition of a stayed sentence appears to have little relationship to the offender's conviction offense or prior criminal record. In addition, there appears to be little proportionality with respect to the length of the jail time and the offender's conviction offense or prior criminal record.

While the Commission has explored the idea of non-imprisonment guidelines on a number of occasions, the Commission has in the past chosen to not develop such guidelines for

several reasons: 1) the variation in the quality and quantity of jail and workhouse resources in various locations around the state; 2) the lack of Commission consensus on what is or should be the major sentencing philosophy behind the use of jail as a condition of a stayed sentence; i.e., punishment or rehabilitation; and 3) the perception that there would be strong opposition from the criminal justice community to guidelines for nonimprisonment sanctions. These reasons are no longer as compelling because various ideas have been developed that can address the concerns expressed above. Nonimprisonment guidelines could be developed that prescribe the level of sanction that would be proportional to the offense of conviction and criminal history score of the offender yet provide the court with the flexibility to set the specific combination of conditions. Thus, each jurisdiction could take into account the available resources and the special needs of the offender.

The Commission, after reviewing the monitoring data on jail use, decided to present the issue and the monitoring data to the judiciary. The Commission believes it is important that the judges are informed of these concerns. The Commission wanted to begin a dialogue with the judges to gain any insights and suggestions the judiciary may have on nonimprisonment guidelines. The Commission presented the issue to the judges at their December conference, and it is evident that the trial bench of this state has a strong desire to participate in any study of sentencing guidelines. The Minnesota District Judges Association, which now encompasses the entire trial bench of the state, met following the presentation. After considerable discussion a motion was unanimously passed calling for the creation of a special committee of the Association to study the various issues of sentencing guidelines as they arise, including the issue of nonimprisonment guidelines. The committee will report to the Board of Directors, who will thereafter make recommendations to the Sentencing Guidelines Commission and any appropriate legislative committees. The Commission will continue this dialogue with the judges as well as continue to monitor and evaluate the data on the use of jails. Portions of the data on the use of jails that were presented to the judges are found below in this report in section V. 1986 Data Summary. Please contact Commission offices at 296-0144 if a complete copy of the data presented to the judges is desired.

C. Judicial training and training planned for probation officers

One of the roles of the Commission is to provide training and assistance in the application of the sentencing guidelines for criminal justice groups. The Commission has begun to place a greater emphasis on this role than what has been true in the past. At the December conference of judges, the Commission conducted a training session for new judges on the sentencing guidelines. The Commission would like to provide this training to the judges on a more routine basis and include the participation of any judge who would like to keep up-to-date on sentencing guidelines issues. The Commission staff has also arranged to conduct a training session for probation officers in February of 1988 in conjunction with the Department of Corrections training schedule. Again, the Commission plans to provide training to the probation officers on a routine basis, preferably two times annually. It is fortunate that the Commission staff can conduct these training sessions with the help of the Supreme Court and the Department of Corrections because the Commission does not have the ability to finance these types of training sessions independently.

V. 1986 Data Highlights

The overall **imprisonment rate** of 19.9% in 1986 was an increase from the 1985 rate of 19.0%. The actual number of offenders sentenced to prison was also greater in 1986. The following table shows the imprisonment rates from 1978, pre-guidelines, to 1986. The figures demonstrate that while the imprisonment rate has fluctuated slightly in both directions over the years, it is apparent that the actual number of offenders sentenced to prison has been increasing since 1981.

Imprisonment Rates

1978 - 1986

Year	&	#
1986	19.9	(1198)
1985	19.0	(1186)
1984	19.6	(1134)
1983	20.5	(1140)
1982	18.6	(1128)
1981	15.0	(825)
1978	20.4	(891)

The **dispositional departure rate** had been increasing steadily since 1981 when it was 6.2%. By 1985, the dispositional departure rate was 10.8%, with the increase due primarily to an increase in mitigated dispositional departures. In 1986, the dispositional departure rate declined somewhat to 10.4%. While the mitigated dispositional departure rate decreased from 7.4% in 1985 to 6.3% in 1986, the aggravated dispositional departure rate increased from 3.4% to 4.1%. The dispositional departure figures over time are summarized in the table below.

Dispositional Departure Rates

1981 - 1986

	Total # of Cases	Total Disp. Depts.		Aggravated		Mitigated	
Year		%	#	%	#	%	#
1986	6032	10.4	(629)	4.1	(248)	6.3	(381)
1985	6236	10.8	(675)	3.4	(211)	7.4	(464)
1984	5792	10.2	(592)	4.0	(229)	6.3	(363)
1983	5562	8.9	(494)	4.5	(250)	4.4	(244)
1982	6066	7.0	(423)	3.4	(205)	3.6	(218)
1981	5500	6.2	(339)	3.1	(170)	3.1	(169)

The overall dispositional departure rates were down in 1986 for all races except for the "other" category where the overall dispositional departure rate increased from 11.0% in 1985 to 12.8% in 1986. The aggravated dispositional departure rate was up in 1986 for all races except the American Indians where the rate was about the same: 6.9% in 1985 and 6.5% in 1986. The aggravated dispositional departure rate, however, continued to be the highest for American Indians in 1986: 4.0% for whites, 3.8% for blacks, 6.5% for American Indians, and 4.4% for other races. The mitigated dispositional departure rate was down in 1986 for all races except the "other" category. Blacks had a slightly higher rate than whites and American Indians continued to have the lowest mitigated dispositional departure rate: 6.2% for whites, 6.7% for blacks, 5.9% for American Indians, and 8.4% for other races.

For females, the aggravated and mitigated dispositional departure rates were about the same in 1986 as they were in 1985 (2.8% aggravated and 2.9% mitigated in 1986). Males had a higher aggravated rate; 4.4% in 1986 compared to 3.5% in 1985, and a lower mitigated rate; 7.0% in 1986 compared to 8.2% in 1985.

The 2nd, 4th, 5th, 6th, 9th, and 10th judicial districts experienced an increase in their aggravated dispositional departure rate in 1986. Only two judicial districts, the 3rd and the 5th, experienced an increase in their mitigated dispositional departure rate in 1986.

The overall **durational departure rate for executed sentences** was about the same in 1986 as it was in 1985. Below is a table displaying the durational departure rates over time.

Durational Departure Rates

1981 - 1986, Executed Sentences Only

	Total # of Cases	Total Dur. Depts.		Aggravated		Mitigated	
Year		%	#	%	#	%	#
1986	1198	19.1	(229)	5.2	(62)	14.0	(168)
1985	1186	19.4	(230)	5.2	(62)	14.2	(168)
1984	1134	21.7	(246)	8.7	(99)	13.0	(147)
1983	1142	22.9	(261)	6.0	(68)	16.9	(193)
1982	1127	20.4	(229)	6.6	(74)	13.8	(155)
1981	827	23.6	(195)	7.9	(65)	15.7	(130)

In 1986, the aggravated durational departure rate for executed sentences was 5.4% for whites, 4.4% for blacks, 5.3% for American Indians, and 5.3% for other races. This aggravated durational departure rate for executed sentences was down in 1986 for blacks and the "other" races but up for American Indians, from 2.4% in 1985 to 5.3% in 1986.

In 1986, the mitigated durational departure rate for executed sentences was 15.0% for whites, 12.4% for blacks, 9.3% for American Indians, and 7.9% for other races. This mitigated durational departure rate for executed sentences was down for blacks and American Indians but up slightly for whites. This rate increased for the "other" racial

category from 4.7% in 1985 to 7.9% in 1986 but remained the lowest among the racial groups.

There were some increases in 1986 in the **imprisonment rates for certain serious person offenders**. All of the offense types displayed and discussed below are presumptive commit to the commissioner; therefore, those cases that did not result in a prison sentence were considered mitigated dispositional departures.

Imprisonment Rates, 1981 - 1986 for Certain Offense Types By Race
(All Cases are Presumptive Commit to Commissioner)

	Aggravated Robbery				Criminal Sexual Conduct Not Involving Children			
	White		Black		White		Black	
Year	%	#	%	#	%	#	%	#
1986	77.9	(53)	87.2	(41)	64.9	(37)	88.2	(15)
1985	73.1	(49)	92.9	(26)	75.0	(51)	100.0	(34)
1984	77.9	(53)	93.5	(29)	67.5	(52)	80.0	(24)
1983	83.1	(69)	93.0	(53)	75.9	(44)	87.5	(14)
1982	91.6	(109)	91.5	(54)	83.7	(36)	90.3	(28)
1981	90.4	(104)	98.0	(48)	70.5	(43)	94.7	(18)

While in 1986, the imprisonment rate had increased for whites who commit aggravated robbery, it had decreased slightly for black offenders. The imprisonment rate for blacks still remained substantially higher than the rate for whites who are convicted of aggravated robbery. The imprisonment rate, however, decreased significantly for whites convicted of criminal sexual conduct not involving children. While this rate also decreased for blacks, it remained substantially higher than the rate for whites convicted of criminal sexual conduct not involving children. It should be recognized that this classification of criminal sexual conduct is based on the statute cited at the time of conviction. It may be that the offense actually involved a child victim but the prosecutor did not pursue a conviction under the statutory provisions that are specific to the age of the victim.

The next table displays the imprisonment rates for offenders convicted of criminal sexual conduct under the statutory provisions that are specific to the age of the victim; i.e., clauses a and b. Imprisonment rates have also been displayed for offenders convicted of intrafamilial sexual abuse, under the statutory provisions that are specific to the offender having a significant relationship to the child victim. Only the figures for white offenders are displayed because there are so few minorities convicted under these provisions. Although the imprisonment rate for criminal sexual conduct involving children increased from 44.8% in 1985 to 63.8% in 1986, the data indicate that over time, this rate has fluctuated greatly. The imprisonment rate for the intrafamilial sexual abuse cases, however, has remained about the same for the last three years.

Imprisonment Rates 1981 - 1986, for Certain Offense Types, White Offenders Only
(All Cases are Presumptive Commit to the Commissioner)

White Offenders

Year	Crim. Sexual Conduct Involving Children		Intrafamilial Sexual Abuse	
	%	#	%	#
1986	63.8	(51)	43.4	(23)
1985	44.8	(39)	44.6	(45)
1984	64.9	(37)	44.1	(41)
1983	54.0	(27)	34.6	(18)
1982	86.5	(32)	52.6	(10)
1981	58.8	(10)	100.0	(1)

The final area of serious person offenders to be examined are those offenders who have used a dangerous weapon in the commission of the crime. These offenders are subject to the mandatory minimum provisions. Thus, the guidelines consider these offenses to have the presumption of commit to the commissioner regardless of where they are located on the grid. The offense of Assault in the 2nd Degree is displayed separately from the other dangerous weapon offenses because the sentencing patterns are quite different.

Imprisonment Rates, 1981 - 1986 for Weapon Offenses By Race
(All Cases are Mandatory Minimum Commitments to Commissioner)

Year	Dangerous Weapon				Assault 2nd Degree			
	White		Black		White		Black	
	%	#	%	#	%	#	%	#
1986	78.1	(75)	80.0	(48)	29.0	(38)	32.0	(8)
1985	74.4	(64)	86.5	(32)	29.4	(43)	25.0	(10)
1984	79.5	(66)	95.9	(47)	25.6	(33)	58.6	(17)
1983	80.9	(89)	93.2	(55)	37.0	(37)	51.7	(15)
1982	86.0	(123)	92.8	(77)	69.1	(45)	64.7	(11)
1981	93.7	(104)	95.7	(45)	45.6	(36)	51.6	(16)

The imprisonment rate for these weapon offenses increased for whites and decreased for blacks in 1986, resulting in nearly the same rate of imprisonment. Blacks have previously maintained a much higher imprisonment rate than the white offenders convicted of weapon offenses. Although the imprisonment rate increased somewhat for black offenders

convicted of Assault 2nd Degree, this rate remained close to the imprisonment rate for whites. The imprisonment rates for Assault 2nd Degree have fluctuated over time with blacks having a higher rate than whites in some years but not others. The circumstances surrounding this crime type can vary greatly and contribute to the variation in sentencing outcomes.

Although in 1986 imprisonment rates for some of the serious person offenses discussed above had increased, departures continued to occur more frequently in 1986 than was the case in the first two years of sentencing under the guidelines. The most frequent reason used to mitigate the sentences for these serious person offenses is "amenable to treatment" or "amenable to probation." For those offenders who were convicted of Aggravated Robbery or Criminal Sexual Conduct but were not sent to prison according to the guidelines, 65% (72 cases) were mitigated because the offender was deemed to be amenable to treatment or probation. Another 11% (12 cases) were mitigated because of a plea negotiation and the remaining 24% (26 cases) were mitigated for various other reasons.

The **rate of jail as a condition of a stayed sentence** has been increasing steadily overall, for both genders, for whites and American Indians, and for several judicial districts, except in 1982 when the jail rate dropped slightly.

Jail Rates, Overall

1978, 1981 - 1986

Year	%	#
1986	54.7	(3298)
1985	53.3	(3324)
1984	53.1	(3075)
1983	50.0	(2781)
1982	44.7	(2717)
1981	46.2	(2539)
1978	35.4	(1547)

Males have consistently maintained a higher jail rate than females just as they do with the imprisonment rates; 57.5% for males and 39.5% for females in 1986. Whites, while consistently maintaining a lower imprisonment rate than other racial groups, had experienced the highest jail rates from 1982 to 1985. In 1986, however, the jail rate for American Indians was higher than the jail rate for whites, 59.1% and 56.2% respectively. Judicial district three has had the lowest imprisonment rates over time but has had some of the highest jail rates. Judicial district four (Hennepin county) had experienced a significant decrease in the jail rate from 54.2% in 1983 to 49.6 % in 1984 and 45.8% in 1985, but that rate bounced back up in 1986 to 50.7%. The rate of imprisonment in Hennepin county had also decreased considerably in 1984 and 1985 but increased again in 1986.

The jail rate has increased in nearly all areas of the sentencing guidelines grid. Some of the increases can be explained by a higher mitigated dispositional departure rate where offenders for whom the guidelines recommend prison sanctions are instead receiving jail

time as a condition of a stayed sentence. The table below represents the increases in jail rates for offenders located in severity levels VII and VII:

Jail Rates for Severity Levels VII - VIII
1981 - 1985

	%	#
1986	20.4	(79)
1985	24.8	(107)
1984	25.8	(111)
1983	20.6	(73)
1982	10.1	(41)
1981	8.5	(29)

It is apparent that some of the increases in the jail rate may be attributed to a higher rate of mitigated dispositional departures as well as mandatory periods of incarceration set by the legislature. However, the lack of nonimprisonment guidelines limits the ability to assess why these increases are continuing as it also prohibits any control over local jail population levels.

The **amount of time a judge pronounces to be served in jail** is highly variable and unrelated to the offender's location on the sentencing guidelines grid. It is also the case that the amount of time the judge pronounces is usually not the actual amount of time the offender serves in jail. Sentencing guidelines staff conducted an in-depth study on 1984 cases from an eight county area where the actual amount of jail time served was collected. According to this data, the average jail time served is approximately 66% of the average jail time pronounced. The table below demonstrates the average jail time pronounced versus the average jail time served. These figures take into account both good time earned and jail time added for violations while on probation.

Average Jail Time Served as a Percent of the Average Jail Time Pronounced
1984 In-depth, 8 County Area
Overall and by County

In Days

		Average Pronounced	Average Served
Overall	66.4%	140	93
Anoka	82.2%	107	88
Crow Wing	100.0%	103	103
Dakota	70.7%	89	63
Hennepin	51.3%	180	92
Olmsted	65.1%	78	51
Ramsey	79.5%	121	96
St. Louis	89.8%	158	141
Washington	86.1%	76	66

Minnesota Sentencing Guidelines Commission

A. ADDITIONAL MODIFICATIONS TO THE SENTENCING GUIDELINES EFFECTIVE DECEMBER 16, 1987

CHANGE TO OFFENSE SEVERITY REFERENCE TABLE

VII	Sale of Cocaine - 152.15, subd. 1(1) (ii) Sale of Heroin - 152.15, subd. 1(1) (ii)

CHANGE TO COMMENTARY II.A.03. - UNRANKED OFFENSES

~~25. Sale of Cocaine - 152.15, subd. 1(1) (ii)~~
~~26. Sale of Heroin - 152.15, subd. 1(1) (ii)~~

Minnesota Sentencing Guidelines Commission

B. MODIFICATIONS TO THE SENTENCING GUIDELINES EFFECTIVE AUGUST 1, 1987

Modifications to G. Convictions for Attempts or Conspiracies:

This change represents an increase in presumptive sentence durations for Conspiracy/ Attempted Murder, 1st Degree:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	130 *127-133*	142 *138-146*	154 *149-159*	166 *161-171*	178 *173-183*	190 *185-195*	202 *196-208*

Modification to Section IV. Sentencing Guidelines Grid:

This change represents increased presumptive sentence durations for Severity Level X.

	0	1	2	3	4	5	6
Murder, 2nd Degree (with intent) **X**	216 *212-220*	236 *231-241*	256 *250-262*	276 *269-283*	296 *288-304*	316 *307-325*	336 *326-346*

Modifications to Section V. Offense Severity Reference Table:

IX	Murder 3 - 609.195 (a)
VIII	Murder 3 - 609.195 (b)
VII	Criminal Sexual Conduct 3 - 609.344 (c),(d),(g),(h),(i), ~~&~~ (j), & (k) Great Bodily Harm Caused by Distribution of Drugs - 609.228 Manslaughter 1 - 609.20(3) & (4) Sale of Cocaine - 152.15, subd. 1(1) (i), (v), & (vi) Sale of Hallucinogens or PCP - 152.15, subd. 1(1) (iii), (v), & (vi) Sale of Heroin - 152.15, subd. 1(1) (v) & (vi) Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(1) (iv), (v), & (vi)
VI	Criminal Sexual Conduct 4 - 609.345(c),(d),(g),(h),(i), ~~&~~ (j), & (k) Theft over $35,000 - 609.52, subd. 3(1)
IV	Sale of Remaining Schedule I, II, & III Non-Narcotics - 152.15, subd. 1 (3) (i) Theft of Controlled Substances - 609.52, subd. 3~~(1)~~(2) Theft of a Motor Vehicle - 609.52, subd. 3(4) (f)
III	~~Aggravated Forgery (over $2,500) - 609.625~~ Check Forgery (over $2,500) - 609.631, subd. 4(1) Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(3) (i) Sale of Remaining Schedule I, II, & III Non-Narcotics - 152.15, subd. 1(3) (ii) Sale of a Schedule IV Substance - 152.15, subd. 1(4) (i) Theft Crimes - ~~$250~~-$2,500 or less (see Theft Offense List) Theft of Controlled Substances - 609.52, subd. 3~~(2)~~(3)(b) Theft of a Firearm - 609.52, subd. 3~~(3)~~(4)(e)
II	~~Aggravated Forgery ($250-$2,500) - 609.625~~ Check Forgery ($200 - $2,500) - 609.631, subd. 4 (2) (a) Damage to Property - 609.595, subd. 1(2)~~(a)~~, (3), & (4) Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(3) (ii) Sale of a Schedule IV Substance - 152.15, subd. 1(4) (ii) Theft Related Crimes ~~$250~~-$2,500 or less
I	~~Aggravated Forgery (Less than $250) - 609.625~~ Check Forgery (less than $200) - 609.631, subd. 4(2) (b) Financial Transaction Card Fraud - 609.821, subd. 2(3) & (4) Sale of Schedule V Substance - 152.15, subd. 1 (5) (i) Voting Violations - 201.014, 201.016, 201.054

Change to Section V. Theft Offense List is as follows:

It is recommended that the following property crimes be treated similarly. This is the list cited for the two Theft Crimes (~~$250~~ $2,500 or less and over $2,500) in the Offense Severity Reference Table.

Changes to Section V. Theft Related Offense List are as follows:

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 or less and over $2,500) in the Offense Severity Reference Table.

Financial Transaction Card Fraud
609.821, subd. 2(1), (2), (5), (6), (7) & (8)

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

MODIFICATIONS NOT REQUIRING ANY CHANGES TO THE SENTENCING GUIDELINES EFFECTIVE AUGUST 1, 1987.

These modifications address new legislation but do not require any changes to the sentencing guidelines because they can be incorporated into the current references.

1) Tampering with a Witness - 609.498, subd. 1 (b) will be ranked with all other witness tampering at severity level V.

2) Theft for Amounts More Than $200 but Less Than $500 - 609.52, subd. 3(3) (c) will be incorporated in Theft Crimes - severity level III and Theft Related Crimes - severity level II.

3) Financial Transaction Card Fraud for Amounts not More Than $200 - 609.821, subd. 3 (i) (iii) will be incorporated in Theft Related Crimes - severity level II.

MODIFICATIONS TO THE COMMENTARY EFFECTIVE AUGUST 1, 1987

Modifications to II.A.03. (Exclusions from Offense Severity Reference Table):

6.	*Collusive Bidding/Price Fixing - 325D.53, subds. 1(3), 2 & 3*
7. ~~6.~~	*Corrupting legislator - 609.425*
8. ~~7.~~	*Criminal sexual conduct, third degree - 609.344, subd. 1(a) (By definition the perpetrator must be a juvenile.)*
9. ~~8.~~	*Criminal sexual conduct, fourth degree - 609.345, subd. 1(a) (By definition the perpetrator must be a juvenile.)*
~~9.~~	~~*Criminal syndicalism - 609.405*~~
10.	*Falsely impersonating another - 609.83*
11.	*Hazardous wastes - 609.671; 115.071, subd. 2(2)*
12. ~~11.~~	*Horse racing-prohibited act-299J.29*
13. ~~12.~~	*Incest - 609.365*
14.	*Killing a police dog - 609.596, subd. 1*
15. ~~13.~~	*Misprision of treason - 609.39*
16. ~~14.~~	*Motor vehicle excise tax - 297B.10*
17. ~~15.~~	*Obscene materials; distribution - 617.241*
~~16.~~	~~*Obscenity re minors - 617.246*~~
18. ~~17.~~	*Obstructing military forces -609.395*
19. ~~18.~~	*Other acts relating to gambling - 609.76*
20. ~~19.~~	*Penalties (sales tax violations) - 297A.39*
21.	*Pipeline safety - 299J.07, subd. 2*
22.	*Police radios during commission of crime - 609.856*
23. ~~20.~~	*Possession of pictorial representations of minors -617.247*
24. ~~21.~~	*Prohibiting promotion of minors to engage in obscene works - 617.246*
25.	*Sale of cocaine - 152.15, subd. 1(1)(ii)*
26.	*Sale of heroin - 152.15, subd. 1(1)(ii)*
27. ~~22.~~	*Sales tax without permit, violations - 297A.08*
28. ~~23.~~	*Treason - 609.385*

Modifications to II.B.:

II.B.109. *An offense upon which a judgment of guilty has not been entered before the current sentencing; i.e., pursuant to Minn. Stat. § 152.18, Subd. 1, shall not be assigned a felony point in computing the criminal history score.*

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. Probation given for an offense treated pursuant to Minn. Stat. 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. 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. . . .

II.B.307. Misdemeanor convictions under Minn. Stat. § 340A.503 will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.

C. MODIFICATION TO THE SENTENCING GUIDELINES EFFECTIVE APRIL 10, 1987

Change to Section F. Modifications:

F. Modifications: Modifications to the Minnesota Sentencing Guidelines ~~and Commentary~~ will be applied to offenders whose date of ~~adjudication of guilt~~ offense is on or after the specified modification effective date. Modifications to the Commentary will be applied to offenders sentenced on or after the specified effective date.

V. PROPOSED MODIFICATIONS, EFFECTIVE AUGUST 1, 1988, ABSENT ANY LEGISLATIVE ACTION TO THE CONTRARY

Proposed addition to Section V. Offense Severity Reference Table:

II	Accidents - 16909, subd. 14(a) (3)

Language for the Proposed but Unadopted Modification to Section II.C. (Presumptive Sentence) (Intervention Proposal)

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. For cases contained in cells below and to the right of the line, the sentence should be executed unless one of the following circumstances exist:

1) the current conviction offense is at severity level I or II and the offender has had less than three prior interventions and the conviction offense does not carry a mandatory minimum sentence; or
2) the current conviction offense is at severity level III or IV and the offender has had less than two prior interventions and the conviction offense does not carry a mandatory minimum sentence.

For purposes of sentencing guidelines policy application, a felony sentence is defined as a felony conviction resulting in an imposed sentence of more than one year or a stay of imposition of sentence. A single intervention includes all prior felony sentences which were served contemporaneously, within a single jurisdiction or in multiple jurisdictions. However, when a felony sentence is given for an offense committed after the preceding intervention began, this would constitute a second or subsequent intervention. Current contemporaneous felony sentences are not to be considered a prior intervention until future crimes are committed by the offender. The computation of interventions would not include any felony sentences that have decayed as described in the criminal history section II.B.1.d.. While prior misdemeanor, gross misdemeanor, and juvenile offenses may be included in the computation of the criminal history score, they are not to be included in the computation of prior interventions.

Language for Proposed but Unadopted Modifications to Commentary following Section II.C.

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. For cases below and to the right of the dispositional line, the guidelines create a presumption in favor of execution of the sentence, unless the conviction offense is at a severity level lower than V and there have not been the required number of prior interventions.*

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.~~ The Commission has carefully monitored and evaluated the increase of imprisonment for property offenders. For offenders convicted of severity level I through IV offenses, it has been determined that it is necessary to require that an offender receive prior criminal justice interventions before the presumption of an executed sentence is deemed appropriate. The purpose of considering interventions in addition to the actual number of criminal history points is to recognize the number of times the offender has received a set of consequences from the criminal justice system and yet has returned to committing more felony crimes. It is believed that this policy will result in proportionally harsher sanctions for the repeat offender than for the crime spree offender. The current method of computing criminal history score does not properly differentiate these types of offenders as the criminal history scores can be affected by on the charging and plea negotiating practices of the prosecuting attorney.

II.C.02. *An intervention is different from a prior felony sentence in that it can include several prior felony sentences. All prior felony sentences served either concurrently or consecutively to one another are considered contemporaneous and will be included within one intervention, even when they are from multiple jurisdictions. However, when a new offense is committed after the preceding intervention began, the new felony sentence would constitute a second or subsequent intervention. Current contemporaneous felony sentences, while they are used to compute the criminal history score, would not represent an intervention until future crimes are committed by the offender. Decayed felony sentences, prior misdemeanor and gross misdemeanor sentences, and prior juvenile felony offenses will not be included in an intervention. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will be included in an intervention. The procedures in II.A.02 shall be used to determine the date of the offense when computing prior interventions.*

II.C.03. *For example, an offender has a criminal history score of three which is comprised of three prior felony sentences for aggravated forgery, all sentenced on 2/21/84. The offender commits one aggravated forgery (severity level II) in Ramsey county on 11/14/88 and one felony theft (severity level III) in Hennepin county on 11/16/88. When the offender is sentenced in Ramsey county on 12/15/88, the guidelines presume a stayed sentence. When*

the offender is sentenced in Hennepin county on 1/22/89, the criminal history score is four which does place the offender to the right of the dispositional line. The number of prior interventions, however, is one and therefore the guidelines presume a stayed sentence. The sentence given for the Ramsey county offense would not constitute a second intervention for the sentencing of the Hennepin county offense because the Hennepin county offense was committed before the Ramsey county offense was sentenced. The sentences given for the Ramsey and Hennepin county offenses are all considered current contemporaneous sentences and would constitute a second intervention if a new crime is committed and sentenced.

~~II.C.02.~~ II.C.04. *In the cells below . . .*

~~II.C.03.~~ II.C.05. *When a stay of execution . . .*

~~II.C.04.~~ II.C.06. *When a stay of imposition . . .*

~~II.C.05.~~ II.C.07. *If an offender is convicted . . .*

~~II.C.06.~~ II.C.08. *When an offender is convicted . . .*

~~II.C.07.~~ II.C.09. *The term "sale" as it relates . . .*

Language for the Proposed but Unadopted Modification to Section II.D.2.b. (Aggravating Factors for Departure)

(Extensive Criminal History Proposal)

(8) The offender had an extensive prior felony record not adequately reflected by the sentencing guidelines grid and is currently being sentenced for multiple felony convictions. The presence of the following circumstances must exist with respect to this aggravating factor:

(a) the offender's criminal history score contains at least six prior felony points; and

(b) the offender is currently being sentenced for more than one felony conviction; and

(c) consecutive sentencing is not permissive.

Language for the Proposed but Unadopted Modification to Commentary, Section II.B.203. (Criminal History)

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 except under the very narrow circumstances defined in section II.D.2.b. (Aggravating Factors for Departure).