

Minnesota Sentencing Guidelines Commission

MODIFICATIONS TO THE SENTENCING GUIDELINES EFFECTIVE AUGUST 1, 1988

Modifications to Section II. F. Concurrent/Consecutive Sentences are as follows:

3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485 ~~and there are unexpired or current executed sentences for any offense for which the person was in custody at time of the escape and/or current executed sentences for offenses committed while on escape status.~~

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.

Modifications to Section V. Offense Severity Reference Table are as follows:

V Check Forgery over \$35,000 - 609.631, subd. 4(1)
Financial Transaction Card Fraud over \$35,000 - 609.821, subd. 3(1)(i)

III Check Forgery (over \$2,500) - 609.631, subd. 4(4) (2)

II Accidents - 169.09, subd. 14 (a)(3) & (b)(1)
Check Forgery (\$200 - \$2,500) - 609.631, subd. 4(2) (3) (a)

Cable Communication Systems Interference - 609.80, subd. 2
Check Forgery (less than \$200) - 609.631, subd. 4(2) (3) (b)
Fleeing a Police Officer - 609.487, subd. 3
Terroristic Threats - 609.713, subd. 3(a)

MODIFICATIONS TO THE COMMENTARY, EFFECTIVE AUGUST 1, 1988

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

- ~~6.~~ 6. Cigarette Tax and Regulation Violations - 297.12, subd. 1
- ~~7.~~ 6- Collusive bidding/price fixing - 325D.53, subds.1(3), 2 & 3
- ~~8.~~ 7- Corrupting legislator - 609.425
- ~~9.~~ 8- Criminal sexual conduct, third degree - 609.344, subd. 1(a)
(By definition the perpetrator must be a juvenile.)
- ~~10.~~ 9- Criminal sexual conduct, fourth degree - 609.345, subd. 1(a)
(By definition the perpetrator must be a juvenile.)
- ~~11.~~ 10. Falsely impersonating another - 609.83
- ~~12.~~ 12. Gambling Regulation Violations - 349.22, subd. 3
- ~~13.~~ 11. Hazardous wastes - 609.671; 115.071, subd. 2(2)
- ~~14.~~ 12. Horse racing-prohibited act - 299J.29
- ~~15.~~ 13. Killing a police dog - 609.596, subd. 1
- ~~16.~~ 14. Incest - 609.365
- ~~17.~~ 15. Metal penetrating bullets - 624.74
- ~~18.~~ 16. Misprision of treason - 609.39
- ~~19.~~ 17. Motor vehicle excise tax - 297B.10
- ~~20.~~ 18. Obscene materials; distribution - 617.241, subd. 4
- ~~21.~~ 19. Obstructing military forces - 609.395
- ~~22.~~ 20. Penalties (sales tax violations) - 297A.39
- ~~23.~~ 21. Pipeline safety - 299J.07, subd. 2
- ~~24.~~ 22. Police radios during commission of crime - 609.856
- ~~25.~~ 23. Possession of pictorial representations of minors-617.247
- ~~26.~~ 24. Prohibiting promotion of minors to engage in obscene works - 617.246
- ~~27.~~ 25. Sales tax without permit, violations - 297A.08
- ~~28.~~ 26. Treason - 609.385
- ~~29.~~ 29. Wire Communications Violations - 626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)

Modifications to Comment II.B.107. (Non-felony sentences where a fine is the only sanction given)

If the offender's prior record involves convictions of offenses that were committed on or after August 1, 1987, for which fines of \$201 - \$700 were the only sanction given, the conviction would count as a misdemeanor for purposes of computing criminal history scores.

If a fine is the only penalty provided by statute for the offense of conviction, and the fine imposed is was in excess of \$500 or in excess of \$700 if the offense occurred on or after August 1, 1983, 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-\$200-or was given that was less than the misdemeanor level of fine as classified above, and that is was 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.

Modifications to Comment II.F.03. (Concurrent/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.*

Modifications to Comments II.E.01 and II.E.02. (Mandatory Minimum Sentences)

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: e.g., Assault in the Second Degree. 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 that the court shall determine the firearm or other dangerous weapon use or firearm possession based upon the record of the trial or plea of guilty and does not require the citing of this provision. If the court makes a finding that a dangerous weapon was involved, the mandatory minimum applies pursuant to Minn. Stat. § 609.11. This provision also provides 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.*

Assault in the Second Degree by statutory definition involves the use of a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies when someone has been convicted of Assault in the Second Degree. The presumptive disposition is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.