MINNESOTA SENTENCING GUIDELINES COMMISSION

SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES

I. ADOPTED MODIFICATIONS TO GO INTO EFFECT FOR CRIMES COMMITTED ON OR AFTER AUGUST 1, 1993.

A. The Commission adopted these modifications last year and they were reviewed by the 1993 Legislature.

The Commission adopted the following severity level rankings for these inadvertently unranked crimes:

Severity Level III

Tax Evasion Laws - 289A.63
Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd.2

Severity Level II

Gambling Regulations - 349.2127, subd. 1-6
Wildfire Arson - 609.5641, subd. 1
Bribery of Participant or Official in Contest - 609.825, subd. 2

Severity Level I

Motor Vehicle Taxes - 296.25, subd. 1(b)
Excise Tax on Alcoholic Beverages - 297C.13, subd. 1
Certification for Title on Watercraft - 86B.865, subd. 1
Criminal Penalties Regarding the Activities of Corporations - 300.60

Add to Unranked Offense List

Unlawful Transfer of Sounds; Sales - 325E.20

B. The 1992 Legislature directed the Commission to modify section II.B.3 of the sentencing guidelines to provide that the criminal history score of any person convicted of violating section 609.21 shall include one-half point for each previous violation of section 169.121, 169.1211 or 169.129. This directive was effective January 1, 1993.

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

sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. 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. There is the following exception to this policy when the current conviction is criminal vehicular homicide or injury: previous violations of section 169.121, 169.1211 or 169.129 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI violations.

II.B.301. *The Commission established a measurement procedure . . .*
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 homicide or injury ~~operation~~. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169.121, 169.1211 or 169.129 ~~DWI and aggravated DWI~~ shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury ~~operation~~. These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.

II.B.302. *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. . . Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines. The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury and who have prior violations under 169.121, 169.1211 or 169.129 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI violations.*

C.The Commission adopted modifications to clarify how to calculate the Misdemeanor Point when the current conviction is for criminal vehicular homicide or injury.

II.B.302. *. . . The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury and who have prior violations under 169.121, 169.1211 or 169.129 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI misdemeanor units. If there are less than four units, add in any DWI units. Four or more units would equal one point. Only DWI units can be used in calculating additional points. Each set of four DWI units would equal an additional point. For example, if an offender had two theft units and six DWI units, the theft would be added to the two DWI units to equal one point. The remaining four DWI units would equal a second point. In a second example, if an offender had six theft units and six DWI units, the first four theft units would equal one point. Four of the DWI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI units for a third point. The total misdemeanor score would be two.*

D.The Commission adopted the following severity level rankings for crimes created or amended by the 1993 Legislature.

Severity Level VII

Controlled Substance Crimes in the Second Degree - 152.022
(to include new provision of selling LSD in a "zone.")
Criminal Sexual Conduct 3 - 609.344, subd. 1 (h), (i), (j), (k), & (l)

Severity Level VI

Controlled Substance Crimes in the Third Degree - 152.023
(to include new provision of possessing LSD in a "zone.")
Criminal Sexual Conduct 4 - 609.345, subd. 1 (h), (i), (j), (k), & (l)
Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (a)

Severity Level V

Arson Second Degree - 609.562
Possession of Explosive or Incendiary Device - 299F.811
Possession of Molotov Cocktail - 299F.815
Riot First Degree - 609.71, subd. 1

Severity Level III

Arson Third Degree - 609.563
Drive-By Shooting (unoccupied motor vehicle or building) - 609.66, subd. 1e (a)
Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1 (b)
(To include additional weapons added by the 1993 Legislature)
Harassment/Stalking (pattern of harassing conduct) - 609.749, subd. 5
Tampering with Fire Alarm System (results in bodily harm) - 609.686, subd. 2

Severity Level II

Harassment/Stalking (aggravated violations) - 609.749, subd. 3
Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4
Negligent Fires (damage greater than $2,500) - 609.576, subd. 1 (b) (3)
Riot Second Degree - 609.71, subd. 2

Severity Level I

Child Neglect/Endangerment - 609.378
Dangerous Weapons on School Property - 609.66 1d
Fifth Degree Assault (3rd or subsequent violation) - 609.224, sub. 4
Prize Notices and Solicitations - 325F.755, subd. 7
Reckless Discharge of a Firearm - 609.66 1a (a) (3)
Tampering with a Fire Alarm (potential for bodily harm) - 609.686, subd. 2
Violation of Pistol without a Permit (2nd or subsequent violation) - 624.714, subd. 1 (a)

E.The Commission adopted the following language to address the new crime of Solicitation of Mentally Impaired Persons.

Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, ~~or for persons convicted of~~ Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), or Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, 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 or intended 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. § 152.096, in which event the presumptive sentence shall be that for the completed offense.

F.The Commission adopted the following Modifications to clarify minimum periods of supervision for sex offenders released from prison.

The Commission adopted the following Commentary language:

II.E.05. M.S. § 609.346 requires that when a court sentences a person to prison for a violation of section 609.342, 609.343, 609.344, or 609.345, the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release for five years, minus the time the person served on supervised release. If the person was convicted for a violation of one of those sections a second or subsequent time, or sentenced to a mandatory departure pursuant to section 609.346, subd. 4, the person shall be placed on conditional release for ten years, minus the time served on supervised release.

The Commission also modified the Sentencing Guidelines Grid by adding language to the description of the unshaded area of the grid:

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

G.The Commission adopted the following modifications to implement the new felony sentencing system.

The Commission adopted the following changes to the Sentencing Guidelines and Commentary:

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.*
The presumptive duration listed on the grid, when executed, includes both the term of imprisonment and the period of supervised release. According to M.S. § 244.101, when the court sentences an offender to an executed sentence for an offense occurring on or after August 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-

thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence. A separate table following the Sentencing Guidelines Grid illustrates how executed sentences are broken down into their two components.

The Commissioner of Corrections may extend the amount of time an offender actually serves in prison if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

II.E. Mandatory Sentences: . . . When an offender has been sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum ~~term~~ sentence for dangerous weapon involvement plus the mandatory minimum ~~term~~ sentence for the second or subsequent controlled substance offense or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

II.F.02. . . . *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 specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release~~, provided that all good time were earned~~.*

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 specified minimum term of imprisonment would be 12 months ~~if all good time were earned~~.*

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.~~ and subtracted from the specified minimum term of imprisonment.*

For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.

The Commission adopted the following table be added to the backside of the Sentencing Guidelines Grid:

Examples of Executed Sentences (Length in Months) Broken Down by:
Specified Minimum Term of Imprisonment and Specified Maximum Supervised Release Term

Offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will no longer earn good time. In accordance with Minn. Stat. § 244.101, offenders will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. This provision requires that the court pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court shall also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison. The court's explanation is to be included in a written summary of the sentence.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	88	58 _	29 _
13	8 _	4 _	98	65 _	32 _
15	10	5	108	72	36
17	11 _	5 _	110	73 _	36 _
18	12	6	122	81 _	40 _
19	12 _	6 _	134	89 _	44 _
21	14	7	146	97 _	48 _
22	14 _	7 _	150	100	50
23	15 _	7 _	158	105 _	52 _
25	16 _	8 _	165	110	55
26	17 _	8 _	180	120	60
27	18	9	190	126 _	63 _
30	20	10	195	130	65
32	21 _	10 _	200	133 _	66 _
34	22 _	11 _	210	140	70
38	25 _	12 _	220	146 _	73 _
41	27 _	13 _	225	150	75
44	29 _	14 _	230	153 _	76 _
46	30 _	15 _	240	160	80
48	32	16	306	204	102
54	36	18	326	217 _	108 _
58	38 _	19 _	346	230 _	115 _
65	43 _	21 _	366	244	122
68	45 _	22 _	386	257 _	128 _
78	52	26	406	270 _	135 _
86	57 _	28 _	426	284	142

II.CORRECTIONS TO THE GUIDELINES TO GO INTO EFFECT IMMEDIATELY.

A.The Commission adopted the following corrections to the Offense Severity Reference Table:

Discharge of Firearm - 609.66, subd. 1a (a)(2)
Discharge of Firearm (public housing, school, or park zone) - 609.66, subd. 1a~~(2)~~ (b)(1)
Firearm Silencer - 609.66, subd. 1a (a)(1)
Theft of a Firearm - 609.52, subd. 3 (1)~~, (2)~~

B.The Commission adopted the following corrections to section II.A.02.b. of the Commentary:

b.If multiple offenses are an element of the conviction offense, such as in Subd. 1 (h) ~~(v)~~ (iii) of first degree criminal sexual conduct, the date of the earliest offense should be used as the date of the conviction offense.

III.ADOPTED MODIFICATIONS TO GO INTO EFFECT FOR CRIMES COMMITTED ON OR AFTER AUGUST 1, 1994, AFTER REVIEW BY THE 1994 LEGISLATURE.

A.The 1993 Legislature passed language directing the Commission to consider modifying the guidelines so that credit for time spent in confinement under Huber Law would be given at the rate of one day for each day served. The Commission adopted the following language with an effective date of August 1, 1994, as specified by the legislation:

C.Jail Credit: . . . 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~~ one day for each day served. ~~See State v. Deschampe, 332 N.W.2d. 18 (Minn. 1983).~~

Comment

III.C.02. *. . . 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~~ one day for each day served.*

B.Several felony offenses were discovered to have been inadvertently left unranked. The Commission adopted the following severity level rankings for these crimes.

Severity Level IV

Theft of Incendiary Device - 609.52, subd. 3 (2)

Severity Level III

Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1 (a) & (b)
(The added provision deals with persons under 18 years who possess a pistol.)
Theft of Trade Secret - 609.52, subd. 2(8)

Severity Level II

Gambling Regulations - 349.22, subd. 4

Severity Level I

Insurance Regulations - 62A.41
Tax-Related Criminal Penalties (gambling section of law) - 349.2171
Voting Violations - Chapters 201, 203B, & 204C

C. The Commission adopted increased severity level rankings of certain prostitution crimes that involve force. These crimes were ranked at severity level V and the Commission adopted an increased ranking of VII.

Severity Level VII

Solicitation of Prostitution (force) - 609.322, subd. 1a (2) & (4)(b)