



MINNESOTA

SENTENCING GUIDELINES COMMISSION

March Lunch & Learn: Consecutive Sentencing and Sentence Modifiers –
2.F & 2.G (and a bit of 2.C & 2.E)



Presentence by MSGC Staff



Sentence Guidelines Policies Effective Date

Guidelines used for the “current” offense

- Each year on August 1st, a Sentencing Guidelines manual is published for offenses *committed* on or after that date.
- Each Sentencing Guidelines manual remains in effect through July 31st of the following year.
- That means that *technically*, the idea of “the current Guidelines” is not based on the calendar date; rather, it is based on the date the current conviction offense occurred.
- These are the policies that will be used to find everything related to the current offense including the severity level, modifiers or mandatory minimums, and the Grid used to find the presumptive sentence.

Guidelines used for the “current” offense


- The changes made to criminal history calculation policies that were enacted in 2019 will now apply to all offenses regardless of their offense date.
- If the current offense occurred on or before 7/31/2019, used the 2019 Sentencing Guidelines manual.
- If the offense occurred on or after 8/1/2019, use the manual in effect based on the date the offense occurred.
 - 05/01/1980-07/31/2020 – the 2019 manual
 - 08/01/2020-09/14/2021 – the 2020 manual
 - 09/15/2021-07/31/2022 – the 2021 manual
 - 08/01/2022-07/31/2023 – the 2022 manual
 - 08/01/2023-07/31/2024 – the 2023 manual
 - 08/01/2024-07/31/2025 – the 2024 manual
 - 08/01/2025-07/31/2025 – the 2025 manual


Presumptive and Permissive Consecutive Sentencing – 2.F.1 & 2.F.2

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE							
	0	1	2	3	4	5	6 or more	
<i>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ¹
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Murder, 3rd Degree (Drugs)</i> <i>Assault, 1st Degree (Great Bodily Harm)</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Agg. Robbery, 1st Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i> <i>Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{1,2}
<i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12	12	13	15	17	19	21 18-23
<i>Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12	12	12	13	15	17	19 17-22

 Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.

 Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

¹ Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

² For Severity Level 7 offenses other than Felony DWI, the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

Calculating a sentence in the shaded area of the Grids for a consecutive sentence

When the sentence is a presumptive commit, but the duration is found in a shaded cell on the Grid, the standard range will be applied to the presumptive sentence on the Grid.

When an offense is given a Presumptive Consecutive sentence, the duration will be found in the criminal history score box for 1.

Example: an Assault 4th Degree sentenced Presumptive Consecutive will be given a commit for 12 months with a range of 12 to 14 months.

$12 - 15\% = 12$ (cannot be less than the statutory duration for a felony)

$12 + 20\% = 14$ (calculation is 14.4; the upper duration is rounded down)

When an offense is given a Permissive Consecutive sentence, the duration will be found in the criminal history score box for 0.

Example: an Assault 2nd Degree/Dangerous Weapon (non firearm) will be given a commit for 21 months with a range of 18 to 25 months

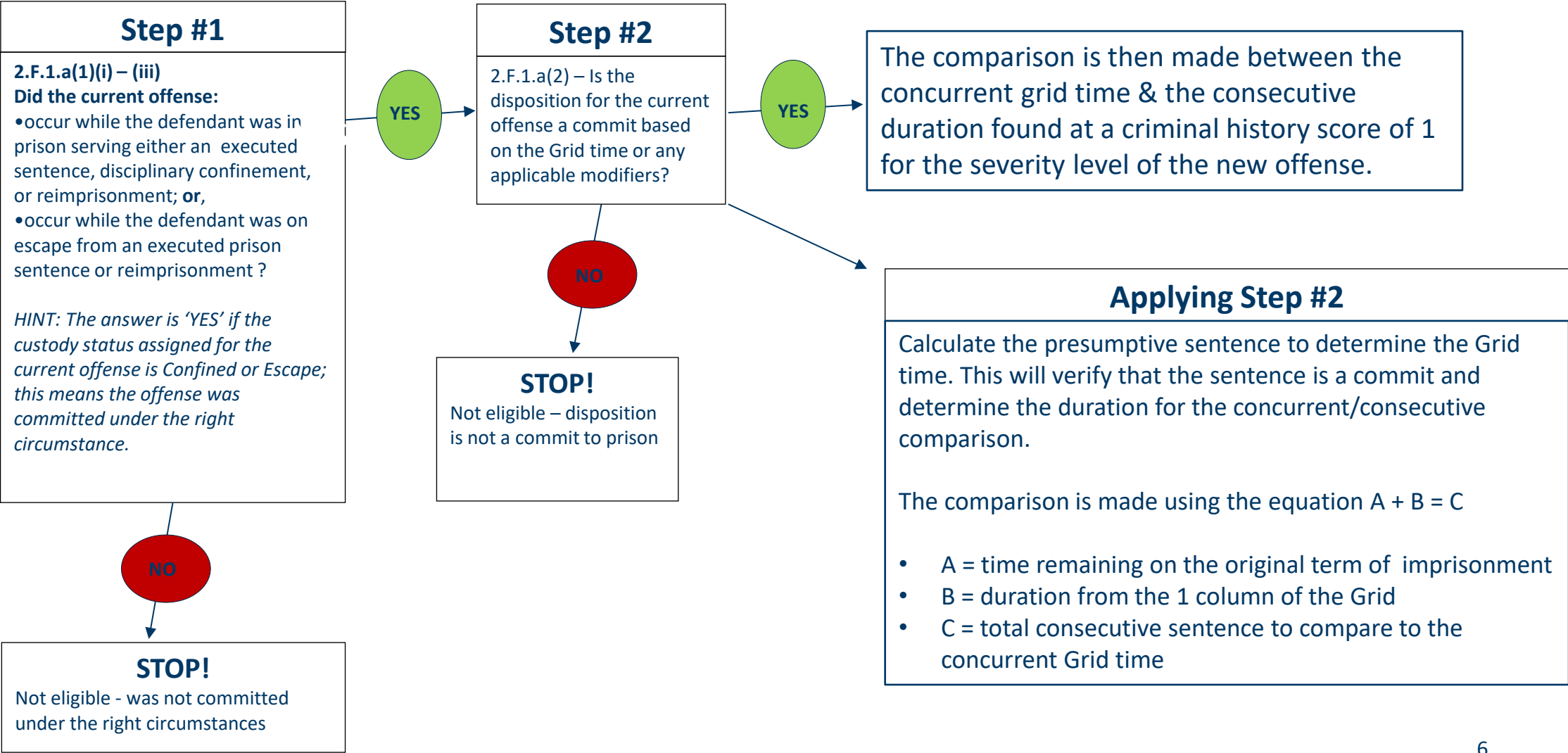
$21 - 15\% = 18$ (calculation is 17.85; the lower duration is rounded up)

$21 + 20\% = 25$ (calculation is 25.2; the upper duration is rounded down)

Consecutive Sentences – General Policies

- When multiple offenses are sentenced, concurrent sentencing is presumptive.
- When offenses are sentenced Consecutive, they are sentenced in the order they occurred, and they must follow the policies in section 2.F.1 or 2.F.2 to sentence without departure.
- When two or more sentences are consecutive to each other, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregated term of imprisonment is served before the aggregated supervised release term begins.
 - Sentence #1: 21 months prison sentence
 - Sentence #2: 18 months prison sentence, served consecutive to Sentence 1
 - Total aggregated sentence is 39 months – 26 months will be served as the term of imprisonment, with 13 months served on supervised release
- If the current offense is sentenced consecutive to a prior executed sentence that has not yet begun its supervised release term, the court must aggregate both terms of imprisonment into a single fixed term. The offender will serve the longer of the two supervised release terms.
 - Original sentence: 36 months prison (24 months term of imprisonment; 12 months supervised release)
 - Prior sentence: 10 months remaining on term of imprisonment
 - Sentence #2: 12 months sentence, served consecutive to prior sentence (8 months term of imprisonment; 4 months supervised release)
 - Total aggregated sentence: 18 months term of imprisonment, 12 months supervised release (the longer of the two supervised release terms)

Determining if Presumptive Consecutive is applicable



Example: Presumptive Consecutive vs. Concurrent Sentencing

10 months into the sentence for an Aggravated Robbery 1st degree w/firearm, the defendant commits an Assault 3rd degree.

- Original executed sentence on the Agg Robbery: 78 months
- Term of Imprisonment: 52 months

- Assault 3rd degree: severity level 4
- Custody status: Confined
- Criminal History: 5.0
 - incoming score of 3 + 1.5 for Agg Robbery 1, and 1 full custody point = 5.5 points
- Concurrent sentence: Commit for 27 months, range of 23 - 32 months (*all assaults committed in prison are commits*)

1. **Time remaining on Term of Imprisonment for Agg Robbery: 42 months** ($52 - 10 = 42$)
2. **Presumptive Consecutive Duration: 15 months** (duration at the 1 box for the Assault 3)
3. Presumptive Consecutive calculation for $A + B = C$:
A = 42 months B = 15 months C = 57 months ($42 + 15 = 57$)

The Assault 3 will be sentenced consecutive to the remaining term of imprisonment on the Agg Robbery since 57 months is longer than 27 months.

Another way to determine if Presumptive Consecutive is applicable

Change the equation:

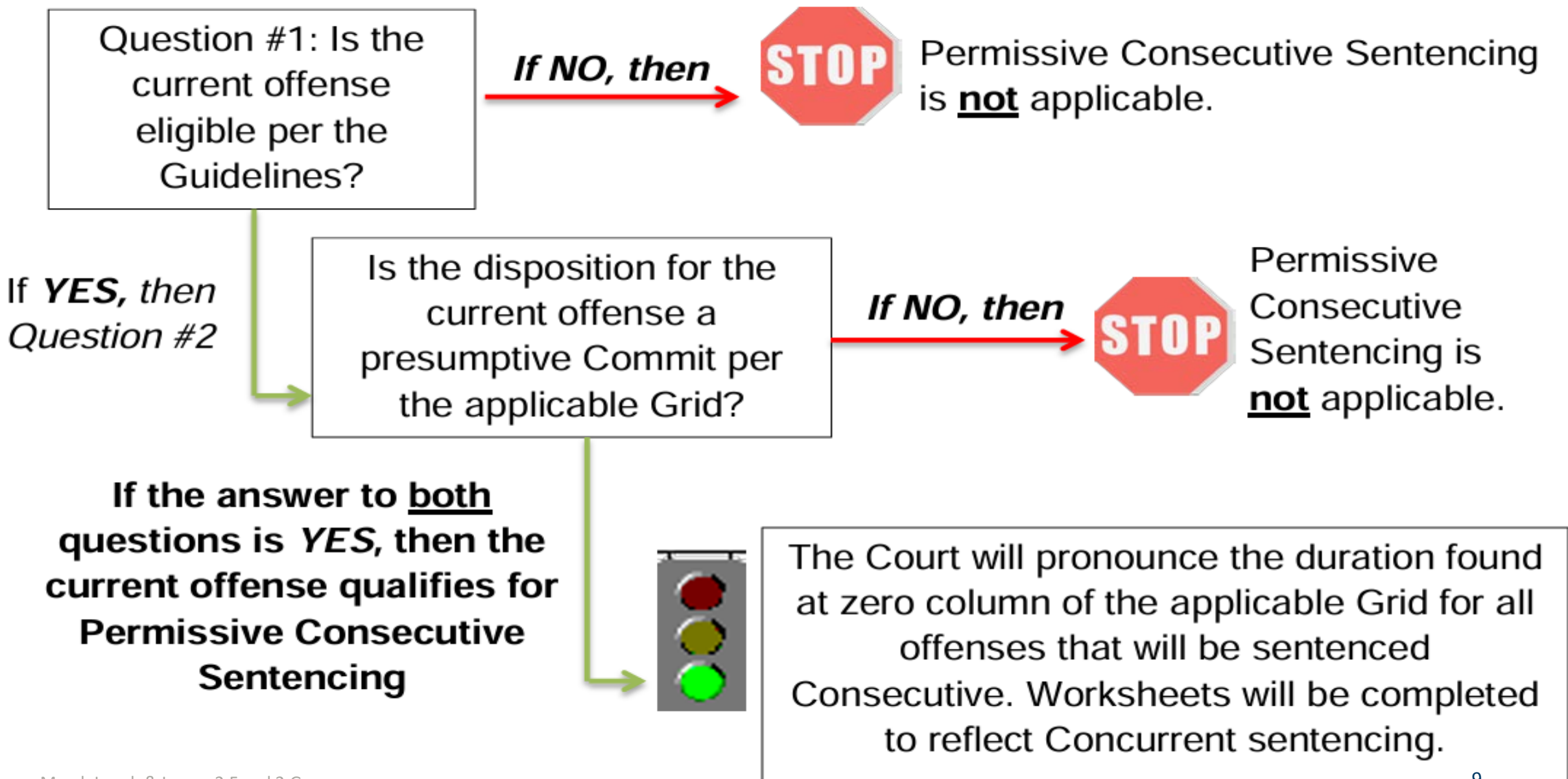
- A = Concurrent grid time for the current offense
 - B = Consecutive time from the 1 box for the severity level of the current offense
 - C = Time remaining to service on the term of imprisonment for presumptive consecutive sentencing to be longer
-
- Assault 3rd degree: severity level 4
 - Custody status: Confined
 - Criminal History: 5.0
 - incoming score of 3 + 1.5 for Agg Robbery 1, and 1 full custody point = 5.5 points
 - Concurrent sentence: Commit for 27 months, range of 23 - 32 months

1. Grid time for current Assault 3: 27 months
2. Presumptive Consecutive duration for the Assault 3: 15 months
3. Presumptive Consecutive calculation for $A - B = C$:
A = 27 months B = 15 months C = 12 months (27 - 15 = 12)

If the defendant has more than 12 months remaining on their Term of Imprisonment, presumptive consecutive sentencing will be longer.

- Of note: when the defendant has already been placed on supervised release, concurrent sentencing is usually longer since that variable is zero.
- Of note: jail credit is not factored in under the consecutive sentencing policies; make sure to use the full time before that calculation

Permissive Consecutive Sentencing



How to impose Permissive Consecutive sentences

Sentence 1

CVO Homicide	8
<i>History</i>	2
Prior custody pt.	1
Prior felony pt.	1

Commit – 68 months

Sentence 2

CVO Homicide	8
<i>History</i>	3
Prior custody pt.	1
Prior felony pt.	2.5

~~Commit – 78 months~~

Commit – 48 months

The court imposes the first sentence at the applicable Grid duration.

The remaining sentences that will be consecutive will have a duration imposed by the court that is found at a zero criminal history score on the applicable Grid – remember, it's a commit even if the cell is shaded.

Those durations are aggregated together, and the sentencing order reflects a term of imprisonment and supervised release period based on that number.

In this example:

Total aggregated sentence: 116 months

Term of imprisonment: 77-1/3 months

Supervised Release term: 38-2/3 months

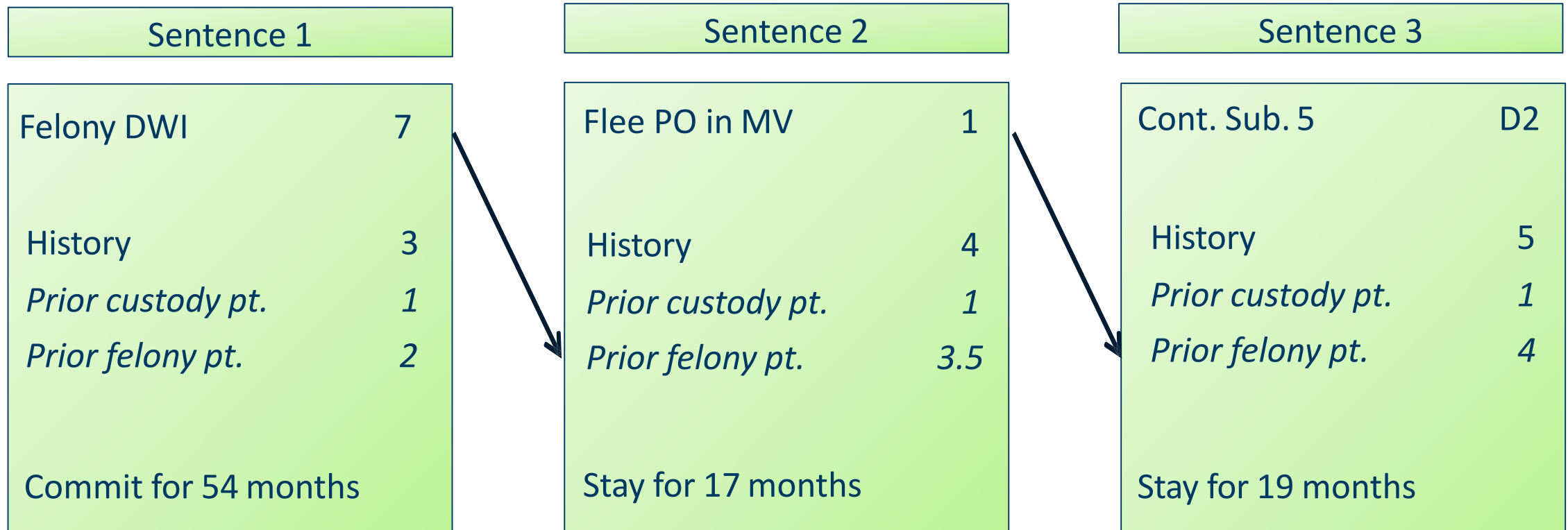
Other Permissive Consecutive eligible offenses

Applies to offenses that can be executed without departure:

- Specific circumstances regarding escape from non-executed sentences.
- Any offense committed while on escape from lawful custody (sentenced consecutive for what they were held on).
- **Fleeing a Peace Officer in a Motor Vehicle**; CSC 1st – 4th degree w/ force or violence.
- An assault committed while in a local jail or workhouse (not the same as Presumptive Consecutive “state custody”)

Example: Other Permissive Consecutive eligible offenses

The worksheets are presented to the court following the “Hernandez” rule to reflect concurrent sentencing.



Example: Other Permissive Consecutive Sentences

Sentence 1		Sentence 2	
Felony DWI	7	Flee PO in MV	1
History	3	History	4
<i>Prior custody pt.</i>	1	<i>Prior custody pt.</i>	1
<i>Prior felony pt.</i>	2	<i>Prior felony pt.</i>	3.5
Commit for 54 months		Commit for 12 months	

The court imposes the first sentence as a commit for the applicable Grid duration.

For the Flee Peace Officer in Motor Vehicle offense, the court imposes the duration found at a zero criminal history score on the applicable Grid and can execute that sentence without departure.

Those durations are aggregated together, and the sentencing order reflects that term of imprisonment and supervised release.

In this example:

Total aggregated sentence: 66 months (1 day)

Term of imprisonment: 44 months

Supervised Release term: 22 months

The sentence for the Controlled Substance 5th degree will be a concurrent sentence.

Sentence Modifiers: Weapons and other modifiers from 2.G (and 2.C & 2.E)

- **Disposition:** Commit. A mandatory minimum of 12+ months will be a prison sentence.
- **Duration:** the duration will always be the grid time, or the mandatory minimum, whichever is longer.

Firearm Used
Firearm Possessed
Other Weapon Used
Certain Persons Not to Possess Firearms
Certain Persons Not to Possess Ammunition Only

Select Modifier
152.021.3(c) Penalty
Aiding Offender - Responsible for Criminal Acts
Assault Bias
Attempt
Benefit of Gang
Benefit of Gang - Victim Under 18
Burglary of Occupied Dwelling w/Applicable Prior
Conspiracy
Criminal Sexual Predatory Conduct
Criminal Sexual Predatory Conduct (Subsequent)
Criminal Vehicular Homicide (Qualified Prior Driving Offense)
Drug Offense (Subsequent)
Failure to Register (Subsequent)
Felony DWI w/Applicable Prior
Prostitution (Aggravated) - Sex Trafficking 609.322
Sex Offense (Subsequent)
Solicit Mentally Impaired
Solicit Minor
Terrorism

Weapons modifier & the Guidelines (more 2.C & 2.E than 2.G but still modifies the sentence)

- *Blakely v. Washington* (1264 S.Ct. 2531 (2004)) stated “The jury trial right does not just mean that a defendant has the right to present a case to the jury; it also means that **a defendant has a right to have a jury, not the court, make all the factual findings required to impose a sentence in excess of the presumptive guideline sentence, unless the defendant formally admits some or all of the factors or formally waives that right.**
- *State v. Barker* (705 NW2d 768 (Minn. 2005)) followed that lead with respect to weapons: if the defendant is charged under § 609.11, **the defendant cannot be sentenced to the mandatory minimum when the resulting sentence is higher than the presumptive sentence for the predicate offense, unless the same Blakely-based procedure is followed.**
- Minn. Stat. § 609.11 provides for mandatory minimum prison sentence when the factfinder determines that the defendant possessed a deadly weapon while committing the predicate offense found in subd. 9.
- The finding of fact can be present when:
 - a) the weapon is included in the conviction offense, such as Assault 2nd degree or Felon in Possession; or
 - b) a plea which includes the use or possession of the weapon by the defendant; or
 - c) there is a finding by the court or jury
- Unless the finding is made, no weapon is indicated.

When the weapon is an element of the conviction offense

When the weapon is an element of the conviction offense, no Blakely finding is required. These are *automatic* weapons offenses under Minn. Stat. § 609.11, subd. 9 so, by statute, the weapon must be included.

- Automatic weapon offenses are:
 - Certain 1st and 2nd degree drug offenses
 - Assault in the Second Degree under Minn. Stat. § 609.222;
 - Harassment (Aggravated Violations) with a dangerous weapon under Minn. Stat. § 609.749, subd. 3(a)(3);
 - Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b;
 - Drive-By Shootings under Minn. Stat. § 609.66.
- If the prosecutor waives 609.11, sentencing without regard to the weapon will be a departure.

Weapons and their mandatory minimum sentences

Dangerous Weapon (non-firearm), Minn. Stat. § 609.11, subd. 4

- First offense: Commit for 366 days (the mandatory minimum) or the grid time, whichever is longer.
- Subsequent offenses: Commit for 36 months or the grid time, whichever is longer, and the court may not depart under 609.11.8.
- Prior offense must have had a finding of fact that the dangerous weapon was an element of the crime, or it must be an automatic weapon offense.

Firearm, Minn. Stat. § 609.11, subd. 5(a)

- First offense: Commit for 36 months or the grid time, whichever is longer.
- Subsequent offenses: Commit for 60 months or the grid time, whichever is longer, and the court may not depart under 609.11.8.
- Prior offense must have had a finding of fact that the firearm was an element of the crime, or it must be an automatic weapon offense.

Felon in Possession or Certain Persons not to Possess Firearm or Ammunition

- The offenses are convicted under either Minn. Stat. §§ 624.713.2(b) or 609.165.2b
- First & subsequent offenses: Commit for 60 months or the grid time, including the ranges, whichever is longer.
- The court may not depart from a subsequent offense under 609.11.8.

Sentencing Modifiers under 2.G (and 2.C & 2.E as noted)

The most common modifiers that are encountered by practitioners include:

1. **152.021.3(c)** – 1st degree drug w/ this penalty statute cited; removes the lower range as an eligible sentence. (2.C.1.c(1))
2. **Attempt – Minn. Stat. § 609.17** – this will reduce the sentence by half, but not to less than the mandatory minimum (2.G.2)
3. **Conspiracy – Minn. Stat. § 609.175** – this will reduce the sentence by half, but not to less than the mandatory minimum Do not to confuse with Minn. Stat. § 152.096, the Chapter 152 conspiracy which does not affect the sentence (2.G.2)
4. **Burglary of an Occupied Dwelling – Minn. Stat. § 609.582, subd. 1(a)** – must have a felony burglary, including decayed offenses (2.C.1.b)
2. **Drug Offense (Subsequent)** – For offenses committed after 8/1/2016, a current 1st or 2nd degree drug offense with a prior 1st or 2nd degree drug conviction within 10 years of the prior's expiration date. (2.C.1.c(2))
3. **Failure to Register (Subsequent)** – Failure to Register w/ this penalty cited: Minn. Stat. § 243.166, subd. 5(c) – mandatory minimum of 24 months (applied based on the penalty statute)
5. **Felony DWI w/ Applicable Prior** – has prior felony DWI as defined in statute or has a prior CVO/CVH under the drug and alcohol statutes (2.C.1.d)

Please refer to Guidelines section 2.C, 2.E, and 2.G for all of the statutes and modifiers that can affect a presumptive sentence.

Second or Subsequent Severe Violence Offense (SVO) Modifier - 2.G.13

The modifier is applied when:

- the current offense is an SVO from Section 8 of the Guidelines (the 2019 (and beyond)); and
- there is a prior conviction(s) for offenses found on the SVO list from Section 8. Conviction must be imposed before the current offense was committed.

Number of Prior Severe Violent Offense Convictions	Duration Added to Presumptive Sentence		Consecutive Sentences
	Current Offense is Completed	Current Offense is Attempt/Conspiracy	
1	12 months	6 months	Does Not Apply
2	18 months	9 months	Does Not Apply
3 or more	24 months	12 months	Does Not Apply

8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.13. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.247, subd. 2	Carjacking 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Not Released in Safe Place/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.282 subd. 1	Labor Trafficking (Death)
609.282 subd. 1a(1)	Labor Trafficking (Minor Victim)
609.282 subd. 1a(3)	Labor Trafficking (Great Bodily Harm)
609.322, subd. 1(a)	Sex Trafficking 1st Degree
609.322, subd. 1(a) with ref. to subd. 1(b)	Aggravated Sex Trafficking 1st Degree
609.322, subd. 1a with ref. to subd. 1(b)(2) or (3)	Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services)
609.342, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree

Statute Number	Offense Title
609.561, subd. 1 or 2	Arson 1st Degree
609.66, subd. 1e(a)(2) & (3)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

- When determining if the SVO modifier is applicable, be certain to verify the statute number, not just the offense title.
- “Prior conviction” is not the same as “used in criminal history.”
- 2.B.1.d(1) and (2) outline the exceptions to using criminal history from single course of conduct situations:
 - The ability to use only 1 prior in history can still mean more than one conviction (2.B.1.d(1)).
 - The ability to use only 2 priors in history can still mean more than one conviction (2.B.1.d(2)).

Attempt/Conspiracy to Commit First-Degree Murder (2.G.12)

12. Attempt or Conspiracy to Commit First-Degree Murder. When an offender is sentenced for attempt or conspiracy to commit murder in the first degree under Minn. Stat. § 609.185 or murder of an unborn child in the first degree under Minn. Stat. § 609.2661, the presumptive disposition is commitment. The presumptive durations are as follows:

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Conspiracy / Attempted Murder, 1st Degree</i>	180 153-216	190 162-228	200 170-240	210 179-240 ¹	220 187-240 ¹	230 196-240 ¹	240 204-240 ¹

Time for questions



This has been a training presentation by the staff of the Minnesota Sentencing Guidelines Commission. Opinions expressed are not necessarily those of the Commission itself, and information presented is not necessarily authoritative.

Please refer to the Commission's web site for the actual modifications to the Sentencing Guidelines that were discussed in this presentation.

<https://mn.gov/sentencing-guidelines/guidelines/>

For assistance, please e-mail sentencing.guidelines@state.mn.us
or call us at 651-296-0144