

# Minnesota Sentencing Guidelines Commission

## Summary of Modifications to the Sentencing Guidelines

### I. Adopted Modifications to Rank the Severity of New or Amended Crimes Passed by the 2000 Legislature - *Effective August 1, 2000*

#### A. The Commission adopted severity level rankings for the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

##### Severity Level IV

Malicious Punishment of A Child (2<sup>nd</sup> or subsequent violation) - 609.377, subd. 3

##### Severity Level III

Insurance Tax - 2971.90, subd. 1 & 2

Possession or Sale of Stolen or Counterfeit Check - 609.528, subd. 3 (4)

##### Severity Level II

Possession or Sale of Stolen or Counterfeit Check - 609.528, subd. 3 (3)

#### B. The Commission adopted the proposal to add the following offense to the *Theft Offense List*. Offenses with monetary values of \$2,500 or less are ranked at Severity Level II and offenses with monetary values over \$2,500 are ranked at Severity Level III.

Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft) - 514.02, subd. 1

#### C. The Commission adopted the proposal to add the following crimes to the *Unranked Offense List* in Section II.A.03. of the Commentary after considering the changes made by the 2000 Legislature:

Anhydrous ammonia (tamper/theft/transport) - 18D.331, subd. 5

Lawful gambling fraud - 609.763

Gambling acts (cheating, certain devices prohibited; counterfeit chips; manufacture, sale, modification of devices; instruction) - 609.76, subd. 3, 4, 5, 6 & 7

#### D. The Commission adopted the proposal to add the following crime to the *Misdemeanor and Gross Misdemeanor Offense List* after considering the changes made by the 2000 Legislature:

Violation of an Order for Protection or Domestic Abuse No Contact Order 518B.01; subd. 14 & 22

**E. The Commission considered the changes made by the 2000 Legislature to the following crimes and adopted the proposal to continue the existing severity level rankings in Section V. Offense Severity Reference Table and the existing policies regarding inclusion on the Misdemeanor and Gross Misdemeanor Offense List, unless otherwise noted above:**

1. Offenses Requiring no technical changes to statutory citations:

Assault in the Fifth Degree; Domestic Assault; Escape; Fleeing a Peace Officer; Harassment/Stalking; Letter, telegram or Package/Opening/Harassment; Attempt/Conspiracy to commit Murder in the First Degree; Solicitation, Inducement and Promotion of Prostitution; Solicitation of Children to Engage in Sexual Conduct; Violation of Harassment Restraining Order.

2. Offenses requiring technical changes only in statutory citations:

Assault in the Fourth Degree; Malicious Punishment of a Child (bodily harm, substantial bodily harm and great bodily harm); Sports Bookmaking.

3. Offenses affected by changes to the statute of limitations -- no changes to statutory citation:

Any crime resulting in the death of the victim, Kidnapping, and Criminal Sexual Conduct in the First through Third Degree.

**F. The Commission considered the changes made by the 2000 Legislature to the following crimes and adopted the proposal to continue to list them on the unranked offense list in section II.A.03 of the commentary:**

Motor Vehicle Excise Tax; Racketeering; Registration of Predatory Offenders

## **II. Other Proposed Modifications - *Effective August 1, 2000***

**A. The Commission adopted the proposal to add the following language to the Sentencing Guidelines and Commentary to address legislative amendments to *Minnesota Statute* § 609.342, subd. 2 creating a presumptive sentence of at least 144 months for Criminal Sexual Conduct in the First Degree. The new version of the Sentencing Guidelines Grid is attached. The Commission also agreed to examine the implications of this new policy on the proportionality of sentences already in place for other sex offenses and other person crimes.**

**1. Modifications to II.C. Presumptive Sentence:**

**C. Presumptive Sentence:** The offense of conviction determines . . . .

Pursuant to M.S. § 609.342, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. Sentencing a person in a manner other than that described in M.S. § 609.342, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer. . .

*II.C.08. When an offender has been convicted of M.S. § 609.342, the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.342, subdivision 2, whichever is longer. According to M.S. § 609.342, subd. 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the First Degree is an executed sentence of at least 144 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.*

**2. Modification to II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:**

**G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:** For persons convicted of attempted offenses or conspiracies . . . .

For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. § 609.342), the presumptive duration is one-half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer.

**3. Modifications to the Offense Severity Reference Table**

**Severity Level VIII**

Criminal Sexual Conduct 1 (sexual penetration) – 609.342 (See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

**Severity Level VII**

Criminal Sexual Conduct 1 (sexual contact -- victim under 13) – 609.342 (See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

**4. Addition of a Footnote to Severity Level VIII on the Sentencing Guidelines Grid:**

<sup>2</sup> Pursuant to M.S. § 609.342, subd. 2, the presumptive sentence for Criminal Sexual

Conduct in the First Degree is a minimum of 144 months (see **II.C. Presumptive Sentence** and **II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**).

- B. The Commission adopted the proposal to add the following aggravating factor to address crimes motivated by bias to the non-exclusive list of factors in Section II.D.2.b. and to amend the associated commentary:**

**II.D.2.b. Aggravating Factors:**

....

(9) The offender intentionally selects the victim or the property against which the offense is committed, in whole or in part, because of the victim's, the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age or national origin.

....

*II.D.206. The aggravating factor involving bias motivation under section II.D.2.b.(9) cannot be used when a person has been convicted under a statute that elevated the crime to a felony offense because of bias motivation, e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault), 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(1) (harassment/stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

*Additionally, in determining when domestic violence, sexual assault and sexual abuse cases are motivated by a victim's sex and may be appropriately enhanced, proof must be shown of at least one factor, such as: Offender makes abusive or derogatory references based on gender; offender states hatred for a gender as a class; crime involves excessive violence, including mutilation; or victims are multiple and all of the same gender.*

- C. The Commission adopted the proposal to make the following change to II.F. Concurrent/ Consecutive Sentences so as to be consistent with changes made to *Minnesota Statute* § 609.035, subd. 6 by the 2000 Legislature. These statutory changes make Criminal Sexual Conduct 1-4 with force or violence crimes for which an offender can be prosecuted and punished in addition to any other crime committed by the defendant as part of the same conduct. It also provides that a judge can impose consecutive sentences in such situations without departing from the sentencing guidelines.**

**Permissive Consecutive Sentences**

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

....

5. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in

Minn. Stat. § 609.487- or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minn. Stat. § 609.342 through 609.345.

- D. The Commission adopted the proposal to make the following change to II.F. Concurrent/Consecutive Sentences to address the issue of offenses committed while on escape status from an executed sentence:**

**Permissive Consecutive Sentences**

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

.....

5. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from an executed felony sentence may be sentenced consecutively to the sentence for the escape.

6. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle . . . .

Consecutive sentences are always permissive under the above criteria numbers 5 and 6.

.....

**II.F.04. . . . .**

Sentences for offenses committed while on escape status from an executed sentence which have presumptive dispositions of commitment to the Commissioner of Corrections are presumptive consecutive to the sentence being served by the offender at the time of the escape. In addition, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.

- E. The 2000 Legislature re-codified the DWI statutes. The Commission adopted the proposal to change the statutory references to these offenses in the custody status section (II.B.2) and the misdemeanor/gross misdemeanor point section (II.B.3) of the guidelines to conform to the new statutory citations and language.**

- F. The Commission adopted the proposal to make the following amendments to the guidelines to clarify current policy:**

- 1. Additional language in II.B.1 Criminal History to clarify the order of sentencing when there are multiple offenses:**

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony

conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Multiple offenses are sentenced in the order in which they occurred. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentence....

**2. Clarification in the Commentary in II.B.101 regarding the inclusion of stays of imposition in the calculation of the felony criminal history.**

*II.B.101. The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given for a felony level offense, no matter what period of probation is pronounced, before the current sentencing.*

**3. The Commission adopted the proposal to make the following changes to the comment in II.A.05 to clarify that judges should, consistent with the Minnesota Supreme Court decision in *State v. Kennard*, specify on the record the reason why a specific severity level was assigned to an unranked offense. The Commission is also proposing to modify this commentary language to clarify that one of the reasons offenses are sometimes placed on the unranked offense list is that the offense can cover a wide range of severity.**

*II.A.05. The other offenses were excluded because prosecutions are rarely, if ever, initiated under them or because the underlying conduct included in the offense covers such a wide range of severity. When persons are convicted of offenses excluded from the Offense Severity Reference Table, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. Judges should specify on the record the reasons a particular severity level was assigned. Factors which a judge may consider when assigning a severity level to an unranked offense include but are not limited to: 1) the gravity of the specific conduct underlying the unranked offense; 2) the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense; 3) the conduct of and severity level assigned to other offenders for the same unranked offense; and 4) the severity level assigned to other offenders engaged in similar conduct. If a significant number of future convictions are obtained under one or more of the excluded offenses, the Commission will determine an appropriate severity level, and will add the offense to the Offense Severity Reference Table.*

**4. Modifications to the Unranked Offense List to clarify that both Possession of Pictorial Representations of Minors and Use of Minors in Sexual Performance are on the list:**

~~*Prohibiting promotion of minors to engage in obscene works 617.246;617.247*~~  
*Possession of Pictorial Representations of Minors - 617.247*  
*Use of Minors in Sexual Performance Prohibited - 617.246*

**III. Adopted Technical Modifications and Corrections – Effective August 1, 2000**

**A. Correct "point" to "points" in II.B.1:**

- a. The weight assigned to each prior felony sentence is determined according to its severity level, as follows: . . .

Severity Level VI - VII = 1 ½ points;

**B. Correction to example cited for concurrent and consecutive sentencing in II.F.03. so that the durations listed in the example reflect durations currently in effect.**

*II.F.03. . . . .*

*If sentenced concurrently, the presumptive duration would be ~~32~~27 months, the term of imprisonment would be ~~24-1/3~~ 18 months and because the sentence runs concurrently with the first offense, the total time to be served would be ~~24-1/3~~ 18 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or ~~7-1/3~~ 4 months less than the time to be served under concurrent sentencing. . . .*

**IV. Adopted Modifications - Effective August 1, 2001, after the 2001 Legislature has Reviewed the Adopted Modifications**

**A. Adopted Changes to the Offense Severity Reference Table:**

**Severity Level IV**

Malicious Punishment of A Child (bodily harm) 609.377, subd 4

**Severity Level I**

~~Malicious Punishment of A Child (bodily harm) 609.377~~

**B. The Commission adopted the proposal to place on the unranked offense list the following crimes which were inadvertently unranked:**

Issuing a Receipt for Goods One Does Not Have - 227.50

Sale of Membership Camping Contracts - 82A.03; 82A.13; 82A.25

**C. The Commission adopted the proposal to add Theft of Registered Bicycles (168C.09) to the Theft Offense List. Theft crimes are ranked at Severity Level II if the value is \$2,500 or less and at Severity Level III if the value is over \$2,500. This offense was inadvertently left unranked.**

**D. The Commission adopted the following change to Section II.B of the Guidelines to allow for a custody status point to be given to a person if they commit a new offense within the initial length of stay pronounced by the sentencing judge for the prior offense.**

2. ~~The offender is assigned one point~~ One point is assigned if the offender:
  - a. ~~he or she~~ was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison following ~~conviction~~ of a felony, or gross misdemeanor or an extended jurisdiction juvenile conviction; ~~or~~
  - b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; ~~or~~
  - c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction.

***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: 1) probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following ~~conviction~~ of a felony, or gross misdemeanor, or an extended jurisdiction juvenile conviction; 2) 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; or 3) if the current offense occurred within the period of the initial length of stay pronounced by the sentencing judge for a felony, gross misdemeanor, or extended jurisdiction juvenile conviction. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point.*