



Minnesota Sentencing Guidelines Commission Adopted Modifications to the Sentencing Guidelines

Effective August 1, 2005

I. Modifications Adopted by the Commission in December 2004 and Approved During the 2005 Legislative Session

A. The Commission adopted the following modifications related to the *Blakely* decision:

1. Departure Language

D. Departures from the Guidelines: The sentences ranges provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case the crimes to which they apply. Thus, the judge shall utilize the presumptive sentence provided in the sentencing guidelines pronounce a sentence within the applicable range unless the individual case involves there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grid. A sentence outside the applicable range on the grid is a departure from the sentencing guidelines and is not controlled by the guidelines, but rather, is an exercise of judicial discretion constrained by case law and appellate review. However, in exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular ~~When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, the court should pronounce a sentence which is proportional to the severity of the offense of conviction and the extent of the offender's prior criminal history, and should take into substantial consideration the statement of purpose and principles in Section I, above. When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances that, and which demonstrate why the sentence selected in the departure is~~ make the departure more appropriate, reasonable, or equitable than the presumptive sentence.

Furthermore, if an aggravated durational departure is to be considered, the judge must afford the accused an opportunity to have a jury trial on the additional facts that support the departure and to have the facts proved beyond a reasonable doubt. If the departure facts are proved beyond a reasonable doubt, the judge may exercise the discretion to depart from the

presumptive sentence. In exercising that discretion, it is recommended that the judge pronounce a sentence that is proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and underlying principles of the sentencing guidelines. Because departures are by definition exceptions to the sentencing guidelines, the departure factors set forth in II.D are advisory only, except as otherwise established by settled case law. When the conviction is for a criminal sexual conduct offense or offense in which the victim was otherwise injured, and victim injury is established in proving the elements of the crime, an aggravated durational departure is possible without a jury determination of additional facts if the departure is based on the offender's prior history of a conviction for a prior criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense.

Comment

II.D.01. *The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines, and stay or impose a sentence that is deemed to be more appropriate, reasonable, or equitable than the presumptive sentence. A defendant has the right to a jury trial to determine whether or not aggravating factors are proved beyond a reasonable doubt.*

II.D.02. *Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.*

II.D.03. *The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.*

II.D.04. *Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the sentencing guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to provide for informed policy making or to ensure consistency, proportionality, and rationality in sentencing.*

Departures and their reasons highlight both the success and problems of the existing sentencing guidelines. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain the reasons the negotiation was accepted.

2. Permissive Consecutive Sentences

II.F. Concurrent/Consecutive Sentences: ****

Permissive Consecutive Sentences

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

1. A current felony conviction for a crime ~~against a person~~ on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to a prior felony sentence for a crime ~~against a person~~ listed in Section VI which has not expired or been discharged; or

2. Multiple current felony convictions for crimes ~~against persons~~ on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to each other; or

...

Consecutive sentences are permissive under the above criteria numbers 1, 2, and 4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under number 1 above, ~~involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged,~~ only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Comment

II.F.04. The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges may also pronounce durational and dispositional departures

both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in Section II.D. of the guidelines.

It is permissible for multiple current felony convictions ~~against persons~~ for offenses on the eligible list to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. Presumptive Sentence. Consecutive sentencing is permissible under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissible under these circumstances when the court has given an upward durational departure on any of the current offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.

VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Statute Number	Offense
152.021 subd. 2a(a)	Manufacture any amount of Methamphetamine
152.022 subd. 1 (5)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023 subd. 1 (3)	Sells Sch. I,II,III to Minor (not Narcotic)
152.023 subd. 1 (4)	Sells Sch I,II,III Employs Minor (not Narcotic)
152.024 subd. 1 (2)	Schedule IV or V to Minor
152.024 subd. 1 (3)	Employs Minor to sell Schedule IV or V
152.0261 subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults
169.09 subd. 14(a)(1)	Accidents- Resulting in Death
169.09 subd. 14(a)(2)	Accidents- Great Bodily Harm
169A.24 subd. 1 (1)	First Degree DWI – 4 or more w/in 10 years
169A.24 subd. 1 (2)	First Degree DWI – 2 nd or subsequent
243.166 subd. 5 (b)	Registration of Predatory Offenders
243.166 subd. 5 (c)	Registration of Predatory Offenders - 2 nd or subsequent
518B.01 subd. 14(d)	Violation of an Order for Protection
609.185	Conspiracy/Attempted Murder in the First Degree
609.19	Murder in the Second Degree
609.195	Murder in the Third Degree
609.20	Manslaughter in the First Degree
609.205	Manslaughter Second Degree
609.21 subd. 1 & 3	Criminal Vehicular Homicide
609.21 subd. 2 & 4	Criminal Vehicular Injury - Great Bodily Harm
609.21 subd. 2a	Criminal Vehicular Injury - Substantial Bodily Harm
609.215	Aiding Suicide
609.221	Assault 1
609.222	Assault 2 - Dangerous Weapon
609.223	Assault 3
609.2231	Assault 4
609.224 subd. 4	Assault 5 - 3 rd or subsequent violation
609.2241	Knowing Transfer of Communicable Disease

Statute Number	Offense
609.2242 subd. 4	Domestic Assault
609.2245	Female Genital Mutilation
609.2247	Domestic Assault by Strangulation
609.228	Great Bodily Harm - Distribution of Drugs
609.229 subd. 3	Crime Committed for Benefit of Gang
609.2325 subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)
609.2325 subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)
609.2325 subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245 subd. 1	Aggravated Robbery 1
609.245 subd. 2	Aggravated Robbery 2
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder I of Unborn Child
609.2662	Murder 2 of an Unborn Child
609.2663	Murder 3 of an Unborn Child
609.2664	Manslaughter 1 of an Unborn Child
609.2665	Manslaughter 2 of an Unborn Child
609.267	Assault 1 of an Unborn Child
609.2671	Assault 2 of an Unborn Child
609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.282	Labor Trafficking
609.322 subd. 1	Solicit, Promote, or Profit from Prost. Under 18
609.322 subd. 1a	Solicit, Promote, or Profit from Prost. (No Age Limit)
609.324 subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution
609.324 subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution
609.324 subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution
609.342 subd. 1	Criminal Sexual Conduct 1
609.343 subd. 1	Criminal Sexual Conduct 2
609.344 subd. 1	Criminal Sexual Conduct 3
609.345 subd. 1	Criminal Sexual Conduct 4
609.3451 subd. 3	Criminal Sexual Conduct 5
609.3453	Criminal Sexual Predatory Conduct
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.365	Incest
609.377	Malicious Punish. of Child
609.378	Child Neglect/Endangerment
609.485 subd. 4(a)(3)	Escape with Violence from GM or Misd. Offense
609.485 subd. 4(b)	Escape with Violence from Felony offense
609.487 subd. 4(a)	Fleeing Peace Officer (Resulting in Death)
609.487 subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487 subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.498 subd. 1a	Tampering with a Witness in the First Degree
609.498 subd. 1b	Tampering with a Witness, Aggravated First Degree
609.527	Identity Theft
609.561	Arson in the First Degree
609.582 subd. 1(a)	Burglary First Degree - of Occupied Dwelling

Statute Number	Offense
609.582 subd. 1(b) 609.582 subd. 1(c)	Burglary First Degree with Dangerous Weapon Burglary First Degree with Assault
609.582 subd. 2(a) 609.582 subd. 2(b)	Burglary Second Degree – Dwelling Burglary Second Degree – Bank
609.591 subd. 3 (1)	Hinder Logging (Great Bodily Harm)
609.594 subd. 2	Damage to Property – Critical Public Service Facilities
609.66 subd. 1e	Drive-By Shooting
609.662 subd. 2 (b)(1)	Duty to Render Aid (Death or Great Bodily Harm)
609.662 subd. 2 (b)(2)	Duty to Render Aid (substantial bodily harm)
609.671	Hazardous Wastes
609.687 subd. 3(1)	Adulteration Resulting in Death
609.687 subd. 3(2)	Adulteration Resulting in Bodily Harm
609.71 subd. 1	Riot 1
609.712	Real/Simulated Weapons of Mass Destruction
609.713 subd. 1	Terroristic Threats-Violence Threat/Evacuation
609.713 subd. 2	Terroristic Threats-Bomb Threat
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm
609.714 subd. 2	Crimes Committed in Furtherance of Terrorism
609.748 subd. 6(d)	Violation of Restraining Order
609.749 subd. 3	Harassment/Stalking (Aggravated Violations)
609.749 subd. 4	Harassment/Stalking (Subsequent Violations)
609.749 subd. 5	Harassment/Stalking (Pattern of Conduct)
609.855 subd. 2(c)(1)	Interference with Transit Operator
609.855 subd. 5	Discharge Firearm at Occup. Tran. Vehicle/Facility
617.23 subd. 3	Indecent Exposure
617.246, subd. 2 617.246, subd. 3 617.246, subd. 4	Use of Minors in Sexual Performance Prohibited Operation/Owner-Use of Minors in Sexual Perform. Dissemination-Use of Minors in Sexual Performance
617.247, subd. 3(a) 617.247, subd. 3(b)	Dissemination of Pictorial Representations of Minors Dissemination by Predatory Offender
617.247, subd. 4(a) 617.247, subd. 4(b)	Possession of Pictorial Representations of Minors Possession by Predatory Offender
624.732 subd. 2	Intentional Release of Harmful Substance
624.74	Metal Penetrating Bullets

B. The Commission adopted a proposal to rank the following crime in Section V. OFFENSE SEVERITY REFERENCE TABLE and to remove this crime from the list of unranked offenses in Comment II.A.03:

III Anhydrous Ammonia (tamper/theft/transport) – 18D.331 subd. 5

II. Adopted Modifications Associated With New and Amended

Crimes Passed by the Legislature During the 2005 Legislative Session

A. The Commission adopted a proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE:

- V Possession of Substances with Intent to Manufacture Methamphetamine – 152.0262

- IV Domestic Assault by Strangulation – 609.2247

- III Attempted Manufacture of Methamphetamine – 152.021, subd. 2a(b)
Anhydrous Ammonia (tamper/theft/transport) – 18D.331, subd. 5 152.136
Methamphetamine Crimes Involving Children and Vulnerable Adults – 152.137
Obstructing Legal Process, Arrest, or Firefighting, or Ambulance Service Personnel Crew – 609.50, subd. 2

- II Electronic Use of False Pretense to Obtain Identity – 609.527, subd. 5a

- I Assault 4 – 609.2231, subd. 1, 2, & 3, & 3a
Criminal Use of Real Property (Movie Pirating) – 609.896
Escape from Civil Commitment – 609.485, subd. 4 (a) (4)
Interference with Privacy (subsequent violations & minor victim) – 609.746, subd. 1(e)

B. The Commission adopted a proposal to add the following offenses to the unranked offense list in Comment II.A.03:

- Labor Trafficking – 609.282
- Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking – 609.283

C. The Commission adopted a proposal to add the following crime to the Misdemeanor and Gross Misdemeanor Offense List:

- Predatory Offender Carrying a Weapon
624.714, subd. 24

D. The Commission adopted a proposal to add the following crimes to

Section VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCING:

<u>152.137</u>	<u>Methamphetamine Crimes Involving Children and Vulnerable Adults</u>
<u>609.2247</u>	<u>Domestic Assault by Strangulation</u>
<u>609.282</u>	<u>Labor Trafficking</u>
<u>609.3453</u>	<u>Criminal Sexual Predatory Conduct</u>

E. The Commission adopted a proposal to add the following language to Sections II.C. and II.E of the *Minnesota Sentencing Guidelines and Commentary* to address the new mandatory life sentences for certain sex offenders:

C. Presumptive Sentence: ****

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 above and to the right of the line, the sentence should be executed. For cases contained in cells below and to the left of the line, the sentence should be stayed, unless the conviction offense carries a mandatory minimum sentence.

Pursuant to M.S. § 609.3455, certain sex offenders are subject to mandatory life sentences. The sentencing guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release sentences under subdivision 2 of that statute. For offenders subject to life with the possibility of release sentences under subdivisions 3 and 4 of that statute, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for release.

The sentencing guidelines do not apply to offenders sentenced under M.S. § 609.109, subdivision 3, which mandates a life sentence for certain repeat sex offenders. The minimum term of imprisonment for offenders sentenced under this statute is 30 years.

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.

Pursuant to M.S. § 609.343, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the Second Degree, 609.343 subd. 1 clauses (c), (d), (e), (f), and (h), is an executed sentence of at least 90 months. Sentencing a person in a manner other than that described in M.S. § 609.343, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

Comment

II.C.10. The 2005 Legislature enacted statutory changes allowing life sentences with the possibility of release for certain sex offenders. The statute requires the sentencing judge to pronounce a minimum term of imprisonment, based on the sentencing guidelines and any applicable mandatory minimum, that the offender must serve before being considered for release. All applicable sentencing guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable in the determination of the minimum term of imprisonment for these sex offense sentences.

E. Mandatory Sentences: ****

First degree murder, and certain sex offenders convicted under subject to Minn. Stat. § 609.109, subd. 3 and § 609.3455, subdivision 2, which have a mandatory life imprisonment sentences, are excluded from offenses covered by the sentencing guidelines.

F. The Commission adopted a proposal to add the following language to Section II.G. of the *Minnesota Sentencing Guidelines and Commentary* to address the new Criminal Sexual Predatory Conduct offense:

II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender – Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495, subd. 4, 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 or the offense committed by the principal offender, 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.

For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grid cell, whichever is greater. For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. § 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. § 609.343, subd. 1(c), (d), (e), (f), and (h)), 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.

For persons sentenced under Minn. Stat. § 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased 50%. 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 underlying crime.

For persons sentenced under Minn. Stat. § 609.3453 (criminal sexual predatory conduct), the presumptive sentence duration for the underlying offense, located in the Sentencing Guidelines Grid Cell defined by the offender's criminal history score and the severity level of the underlying crime, is increased by 25%. If the person was convicted and sentenced for a sex offense before the commission of the present offense, the presumptive sentence duration for the underlying offense is increased by 50%. Any partial months resulting from this calculation should be rounded down to the nearest half month.

For persons sentenced under Minn. Stat. § 609.229, subd. 3(a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive disposition is always commitment to the Commissioner of Corrections due to the mandatory minimum under Minn. Stat. § 609.229, subd. 4. The presumptive duration is determined by the duration contained in the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 12 months. If the underlying crime is an attempt, the presumptive duration includes an additional 6 months rather than 12.

Any changes to presumptive sentences under this section are also applied to the upper and lower numbers of the sentencing range provided on the Sentencing Guidelines Grid.

G. The Commission adopted the following modifications to Section II.E. of the *Minnesota Sentencing Guidelines and Commentary* to address the increased conditional release terms for sex offenders and the expanded application of conditional release to Failure of Predatory Offenders to Register (risk level III sex offenders) and to Fourth Degree Assault against secure treatment facility personnel.

E. Mandatory Sentences: ****

When an offender is sentenced for first degree (felony) driving while impaired, the court must impose a sentence of at least 36 months. The presumptive disposition is determined by the dispositional line on the Sentencing Guidelines Grid. For cases contained in cells above and to the right of the line, the sentence should be executed. For cases contained in cells below and to the left of the line, the sentence should be stayed unless the offender has a prior conviction for a felony DWI, in which case the presumptive disposition is Commitment to the Commissioner of Corrections. ~~In addition, when the court commits a person convicted of first degree (felony) driving while impaired to the custody of the commissioner of corrections, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.~~

Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. When a court commits a person subject to one of these statutes to the custody of the commissioner of corrections, it shall provide that after the person has been released from prison, the commissioner shall place the person on conditional release for the designated term. A person committed to prison for a sex offense is subject to a ten-year conditional release term. If the person was convicted of a sex offense before conviction for the current sex offense and either the present or prior sex offense was for a violation of M.S. §§ 609.342 (first degree criminal sexual conduct), 609.343 (second degree criminal sexual conduct), 609.344 (third degree criminal sexual conduct), or 609.3453 (criminal sexual predatory conduct), the person shall be placed on conditional release for the remainder of the person's life; a person subject to a life with the possibility of release sentence, if they are released, is also subject to conditional release for the remainder of their life. If a person is sentenced for failure to register as a predatory offender and the person was assigned a risk level III under M.S. § 244.052, the person shall be placed on conditional release for ten years. A person convicted of fourth degree assault against secure treatment facility personnel

under M.S. § 609.2231, subdivision 3a is subject to a five-year conditional release term. Finally, a person sentenced to imprisonment for first degree (felony) driving while impaired is subject to five years of conditional release.

Comment

~~**II.E.05.** M.S. § 609.109 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 609.109, subd. 6, the person shall be placed on conditional release for ten years, minus the time served on supervised release. M.S. § 169A.276, subd. 1(d) requires that when the court commits a person to the custody of the commissioner of corrections for first degree (felony) driving while impaired, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.~~

H. The Commission adopted the following modifications to Section II.B. of the *Minnesota Sentencing Guidelines and Commentary* to address the new provision allowing multiple sentences arising out of the same course of conduct involving the new methamphetamine-related crimes involving children and vulnerable adults offense:

II.B. Criminal History.

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 sentences.

- b. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, only the offense at the highest severity level is considered; when multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stat. § 152.137, the conviction and sentence for the “earlier” offense should not increase the criminal history score for the “later” offense.

Comment

II.B.102. *In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 152.137, under which persons convicted of methamphetamine-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior. Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony, or a conviction under Minn. Stat. § 609.251, under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. §§ 152.137, 609.585 or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to ~~that statute~~ these statutes, to prevent systematic manipulation of ~~Minn. Stats. § 609.585 or 609.251~~ these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.*

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

I. The Commission adopted the following modifications to Section II.G. of the *Minnesota Sentencing Guidelines and Commentary* to address the increased statutory maximum sentence for a crime committed for the benefit of a gang when the victim of the crime is a minor:

II.G. Attempts, Conspiracies, and Other Sentence Modifiers.

For persons sentenced under Minn. Stat. § 609.229, subd. 3(a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive disposition is always commitment to the Commissioner of Corrections due to the mandatory minimum under Minn. Stat. § 609.229, subd. 4. The presumptive duration is determined by the duration contained in the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 12 months or an additional 24 months if the victim of the crime was under the age of eighteen years. If the underlying crime is an attempt, the presumptive duration includes an additional 6 months ~~rather than 12~~ or an additional 12 months if the victim of the crime was under the age of eighteen years.

III. Other Proposed Modifications Related to Legislation Passed During the 2005 Legislative Session

A. The Commission adopted the following modifications to Section II.G. and to the Sentencing Guidelines Grid to address the legislative mandate to provide sentence ranges of 15% downward and 20% upward:

II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:

Further, the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, or Conspiracy to Commit or Attempted First Degree Murder of an Unborn Child, Minn. Stat. § 609.2661, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or More
<i>Conspiracy/ Attempted Murder, 1st Degree</i>	180 176-184 153-216	190 186-194 161.5-228	200 196-204 170-240	210 206-214 178.5-240 ¹	220 216-224 187-240 ¹	230 226-234 195.5-240 ¹	240 236-240 204-240 ¹

¹ M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 20 years, the range is capped at that number.

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	306 299-313 261-367	326 319-333 278-391	346 339-353 295-415	366 359-373 312-439	386 379-393 329-463	406 399-413 346-480³	426 419-433 363-480³
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 144-156 128-180	165 159-171 141-198	180 174-186 153-216	195 189-201 166-234	210 204-216 179-252	225 219-231 192-270	240 234-246 204-288
<i>Criminal Sexual Conduct, 1st Degree</i> ² <i>Assault, 1st Degree</i>	IX	86 81-91 74-103	98 93-103 84-117	110 105-115 94-132	122 117-127 104-146	134 129-139 114-160	146 141-151 125-175	158 153-163 135-189

<i>Aggravated Robbery 1st Degree Criminal Sexual Conduct, 2nd Degree (c),(d),(e),(f),(h)²</i>	VIII	48 44-52 <u>41-57</u>	58 54-62 <u>50-69</u>	68 64-72 <u>58-81</u>	78 74-82 <u>67-93</u>	88 84-92 <u>75-105</u>	98 94-102 <u>84-117</u>	108 104-112 <u>92-129</u>
<i>Felony DWI</i>	VII	36	42	48	54 51-57 <u>46-64</u>	60 57-63 <u>51-72</u>	66 63-69 <u>57-79</u>	72 69-75 <u>62-86</u>
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i>	VI	21	27	33	39 37-41 <u>34-46</u>	45 43-47 <u>39-54</u>	51 49-53 <u>44-61</u>	57 55-59 <u>49-68</u>
<i>Residential Burglary Simple Robbery</i>	V	18	23	28	33 31-35 <u>29-39</u>	38 36-40 <u>33-45</u>	43 41-45 <u>37-51</u>	48 46-50 <u>41-57</u>
<i>Nonresidential Burglary</i>	IV	12 ¹	15	18	21	24 23-25 <u>21-28</u>	27 26-28 <u>23-32</u>	30 29-31 <u>26-36</u>
<i>Theft Crimes (Over \$2,500)</i>	III	12 ¹	13	15	17	19 18-20 <u>17-22</u>	21 20-22 <u>18-25</u>	23 22-24 <u>20-27</u>
<i>Theft Crimes (\$2,500 or less) Check Forgery (\$200-\$2,500)</i>	II	12 ¹	12 ¹	13	15	17	19	21 20-22 <u>18-25</u>
<i>Sale of Simulated Controlled Substance</i>	I	12 ¹	12 ¹	12 ¹	13	15	17	19 18-20 <u>17-22</u>



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.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. ~~These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault).~~ See sections [II.C. Presumptive Sentence](#) and [II.E. Mandatory Sentences](#).

¹ One year and one day

² Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see [II.C. Presumptive Sentence](#) and [II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers](#)). Pursuant to M.S. § 609.3455, certain sex offenders are subject to life sentences. Some of these life sentences are life without release, while others are indeterminate life sentences with the minimum term of imprisonment specified by the court and based upon the sentencing guidelines and any applicable mandatory minimums. See [II.C. Presumptive Sentence](#).

³ M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.

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