

Minnesota Sentencing Guidelines Commission

Adopted Modifications to the MN Sentencing Guidelines and Commentary Effective August 1, 2009

I. Non-Legislative Modification Adopted July 17, 2008 – Effective August 1, 2009

Calculation of Juvenile Point

The Commission adopted a proposal to amend Guidelines Section II.B.4, providing that only juvenile adjudications rather than juvenile adjudications and continuances without adjudication be used in the calculation of a juvenile point.

Guidelines Section II.B.4:

4. The offender is assigned one point for every two adjudications ~~offenses~~ committed and prosecuted as a juvenile that are felonies under Minnesota law, provided that:
 - ~~a. Findings were made by the juvenile court pursuant to an admission in court or after trial;~~
 - a b. Each adjudication ~~offense~~ represented a separate behavioral incident or involved separate victims in a single behavioral incident;
 - b e. The juvenile adjudications were pursuant to ~~offenses occurring~~ after the offender's fourteenth birthday;
 - c d. The offender had not attained the age of twenty-five at the time the felony was committed for which he or she is being currently sentenced; and
 - d e. Generally, an offender may receive only one point for adjudications ~~offenses~~ committed and prosecuted as a juvenile that are felonies under Minnesota law. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would

presume imprisonment. The presumptive disposition of the juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment. This determination is made regardless of the criminal history score and includes those offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in Section II.C. Presumptive Sentence.

Comment

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II.B.402. Only juvenile adjudications for offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration.

II.B.403. Consistent with Minn. Stat. § 609.035, which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile adjudications for offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.

II.B.404. The juvenile adjudications must result from offenses ~~must have been~~ committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date of adjudication ~~the findings were made by the court~~ to eliminate variability in application based on differing juvenile court practices.

II.B.405. Juvenile adjudications ~~offenses~~ will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.

II.B.406. The Commission decided that, provided the above conditions are met, it would take two juvenile adjudications ~~offenses~~ to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile adjudications ~~offenses~~. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any mandatory minimum laws that apply to the offense or any other applicable policies under Section II.C. Presumptive Sentence. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile adjudications ~~offenses~~ are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication ~~offense~~ meeting the above criteria would receive no point on the criminal history score.

~~**II.B.407.** Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of more than one. The Commission was concerned with possible past disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to give proper notice that in the future, the juvenile history can result in more than one criminal history point.~~

II.B.407. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with adjudications findings arising from a single course of conduct when single victims are involved and when the adjudications findings involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with an adjudication finding for purposes of computing criminal history. When there are multiple felony offenses with adjudications findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with adjudications findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

II. New and Amended Crimes Passed by the 2009 Legislature Adopted July 23, 2009 – Effective August 1, 2009

1. Statutory Amendments without Modifications

The Commission considered amendments made to the following statutes and adopted a proposal to retain their current severity level rankings and status on the permissive consecutive list (where applicable): Failure to register as a predatory offender (M.S. §243.166); criminal sexual conduct second- and fourth-degrees (M.S. §§ 609.343 and 345); electronic solicitation of children (M.S. § 609.352); escape from civil commitment (M.S. §609.485).

2. The Commission adopted a proposal to modify Guidelines Section V. Offense Severity Reference Table and the Numerical Reference of Felony Statutes related to new crime legislation:

....

VII [Financial Exploitation of a Vulnerable Adult (over \$35,000) – 609.2335

....

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
<u>609.2335</u>	<u>Financial Exploitation of Vul. Adult (over \$35,000)</u>	<u>7</u>

3. New Misdemeanors and Gross Misdemeanors Reviewed

A proposal was adopted that would not add unauthorized practice by a peace officer (M.S. § 626.863) and misappropriation of money by state official (M.S. § 169A.139) to the Misdemeanor and Gross Misdemeanor Offense List.

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

Misdemeanor and Gross Misdemeanor Offense List

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Discharging a Laser at an Aircraft
609.857

Financial Exploitation of a Vulnerable Adult
609.2335

....

5. The Commission adopted a proposal to modify Guidelines Section II.D. Departures from the Guidelines:

Adopted Modifications to Guidelines Section II.D.2:

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

....

b. Aggravating Factors:

.....

(13) The offense was committed in the presence of a child.

(14) The offense was committed in a location in which the victim had an expectation of privacy.

6. The Commission adopted a proposal to modify Guidelines Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers:

Adopted Modifications to Guidelines Section II.G:

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For persons sentenced under Minn. Stat. § 609.322, subd. 1(b) – Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking – the presumptive sentence is determined by 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 48 months. If the underlying crime is an attempt or conspiracy, the presumptive duration includes an additional 24 months instead.

III. Non-Legislative Modifications Adopted July 23, 2009 – Effective August 1, 2009

1. Rank Inadvertently Unranked Offense

The Commission adopted a proposal to rank M.S. § 211B.13, at severity level 4 on the Severity Level Reference Table and the Numerical Reference of Felony Statutes. The crime was inadvertently left unranked.

....

IV [Bribery, Advancing Money, and Treating Prohibited – 211B.13]

....

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
<u>211B.13</u>	<u>Bribery, Advancing Money, and Treating Prohibited</u>	<u>4</u>

2. Permissive Consecutive Sentences

The Commission adopted a proposal to add a policy to Guidelines Section VI, in which convictions for attempts or conspiracies for offenses on the Permissive Consecutive Sentences list are eligible for permissive consecutive sentencing.

Adopted Modifications to Guidelines Section VI:

OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

....

609.185 ~~Conspiracy/Attempted Murder in the First Degree~~

....

3. Enhanced Felony Priors

The Commission adopted a proposal to clarify that misdemeanor and gross misdemeanor offenses which are excluded from the criminal history for an enhanced felony should be used to calculate future criminal history provided that the offense is not an enhanced felony. The section is also restructured to make the Commission's policy on the use of prior non-felony DWI criminal history clearer.

Adopted Modifications to Guidelines Section II.B.6:

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score. Except for in the case of first degree (felony) driving while impaired (DWI), misdemeanor and gross misdemeanor offenses used to enhance the current offense shall be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement shall always be used in calculating the offender's criminal history score.

~~For instance, if the current offense is a first degree (felony) driving while impaired (DWI) offense and the offender has a prior felony DWI offense, the prior felony DWI shall be used in computing the criminal history score, but the prior misdemeanor and gross misdemeanor offenses used to enhance the prior felony DWI cannot be used in the offender's criminal history. Similarly, if the current offense is any other enhanced felony, prior misdemeanor and gross misdemeanor offenses used to enhance the current offense to a felony shall be excluded from computing the criminal history score (other than the custody status point), but prior felony offenses used for enhancement shall be included.~~

4. Released Pending Sentencing Custody Status

The Commission adopted a proposal to modify Guidelines Section II.B.2, to make it clearer that a custody status point is assigned to offenders released pending sentencing on a non-traffic gross misdemeanor or gross misdemeanor DWI, not just a felony. The modified language renumbers the section and makes it consistent throughout.

Adopted Modifications to Guidelines Section II.B.2:

- * 2. One point is assigned if the offender:
- a. was on probation, parole, supervised release, conditional release, released pending sentencing, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or ~~extended jurisdiction juvenile conviction~~ conviction in a felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case; or
 - b. ~~was released pending sentencing at the time the felony was committed for which he or she is being sentenced following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction; or~~
 - b. ~~c.~~ committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. “not to exceed three years,” “three to five years,” “up to the statutory maximum”), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. This policy applies to a conviction in a prior felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case~~an extended jurisdiction juvenile conviction~~. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or
 - c. ~~d.~~ became subject to one of the criminal justice supervision statuses listed in 2.a above at any point in time during which the offense occurred when multiple

* Language from other adopted modifications is not reflected.

offenses are an element of the conviction offense or the conviction offense is an aggregated offense.

- d. e. An additional custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above for a specified sex offense, other than Failure to Register as a Predatory Offender (M.S. 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (243.166).

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5. Assault at a Secure Treatment Facility

The Commission adopted a proposal to clarify that assault on a secure treatment facility employee under M.S. § 609.2231, subd. 3a(b), is a felony which carries a mandatory minimum prison sentence of at least one year and one day; and, therefore, the presumptive disposition is commitment to the Commissioner of Corrections.

Adopted Modifications to Guidelines Section II.C:

~~In addition, t~~The presumptive disposition is commitment to the Commissioner of Corrections for an escape from an executed sentence, and for a felony assault committed by an inmate serving an executed term of imprisonment, is or for assault on secure treatment facility personnel.
~~commitment to the Commissioner of Corrections.~~

It is presumptive for escape from an executed sentence and for a felony assault committed by an inmate serving an executed term of imprisonment ~~these offenses~~ to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II.F. Presumptive Consecutive Sentences).

6. Theft - Reasonably Foreseeable Risk of Bodily Harm

The Commission adopted a proposal to clarify Guidelines Section II.A, in that the policy for theft (reasonably foreseeable risk of bodily harm) also applies to thefts for which there is a prior conviction and foreseeable risk of bodily harm (\$501-\$1,000). This modification corrects the oversight and does not change the intent of the Commission.

Adopted Modifications to Guidelines Section II.A:

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For persons sentenced under Minn. Stat. § 609.52, subd. 3a for which a violation involves a monetary value over \$1,000, or a monetary value between \$500 and \$1,000, and the person has been convicted within the preceding five years for an offense under this section, and creates a reasonably foreseeable risk of bodily harm to another, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table.

NUMERICAL REFERENCE OF FELONY STATUTES

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

Statute	Title	Severity Level
609.52 subd. 3a(1)	Theft (\$1,000, or less; risk of bodily harm)	2
609.52 subd. 3a(2)	Theft (over \$1,000; risk of bodily harm)	see note
<u>609.52 subd. 3a(2)</u>	<u>Theft (\$501-\$1,000, and prior conviction; risk of bodily harm)</u>	<u>see note</u>

7. Warrant Status

The Commissioner adopted a proposal to modify Guidelines Section II.B, adding a comment meant to clarify that “warrant status” is included in the guidelines’ definition of statuses triggering a custody point by virtue of the fact that another custody type already exists.

Adopted Modifications to Guidelines Section II.B:

Comment

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II.B.209. A custody status point shall be assigned to an offender who is on any custody status condition listed above who absconds and commits a new felony offense. The custody status type depends on the form of supervision which exists. For example, a custody status point is assigned to a person who absconds from supervised release and commits a new felony offense. The custody status type would be “supervised release.”

IV. Technical Modifications and Corrections Adopted July 23, 2009 – Effective August 1, 2009

1. Technical Modification of Statutory Citations for Certain persons not to possess firearms (M.S. § 624.713)

Misdemeanor and Gross Misdemeanor Offense List

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Certain Persons Not to Possess Firearms
624.713, subd. 2(c)

V. OFFENSE SEVERITY REFERENCE TABLE

....

III Dangerous Weapons/Certain Persons Not to Have Firearms
- 609.67, subd. 2; 624.713, subd. ~~4(a)~~ 2(a)

VI Certain Persons Not to Have Firearms – 624.713, subd. ~~4(b)~~ 2(b); 609.165, subd. 1b

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
....		
624.713 subd. 4(a) <u>2(a)</u>	Certain Persons Not to Have Firearms	3
624.713 subd. 4(b) <u>2(b)</u>	Certain Persons Not to Have Firearms	6

**2. Technical Modification of Title for Assault in the Fourth Degree
(M.S. § 609.2231, subd. 2)**

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.2231 subd. 2	Assault 4 (Bodily Harm, Firefighters and <u>Emergency Medical Personnel</u>)	1

**3. Technical Modification of Title for Solicitation of Children
(M.S. § 609.352, subd. 2a)**

V. OFFENSE SEVERITY REFERENCE TABLE

G	Solicitation of Children to Engage in Sexual Conduct (<u>Electronic Internet or computer</u>) – 609.352, subd. 2a
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NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (<u>Electronic Internet or computer</u>)	G

4. Technical Modification of Title for Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking (M.S. § 609.322)

V. OFFENSE SEVERITY REFERENCE TABLE

IX Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree Individual Under 18 - 609.322, subd. 1

V Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree; - 609.322, subd. 1a

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
609.322 subd. 1	Solicits, Promotes, or Receives Profit Derived from Prostitution; <u>Sex Trafficking in the First Degree</u> Indiv. Under 18	9
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; <u>Sex Trafficking in the Second Degree</u>	5

OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Statute Number	Offense Title
609.322, subd. 1	Solicit, Promote, or Profit from Prost.; <u>Sex Trafficking in the First Degree</u> Under 18
609.322, subd. 1a	Solicit, Promote, or Profit from Prost.; <u>Sex Trafficking in the Second Degree</u> (No Age Limit)

5. Change Reference from “Findings” to “Adjudications”

The Commission adopted a proposal to correct a reference in Guidelines Section II.B.3, which should be updated to “adjudications.” This is consistent with the Commission’s intent and the other policy changes in Guidelines Section II.B.4, effective August 1, 2009.

Adopted Modifications to Guidelines Section II.B.3:

**II.B.312. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile ~~findings~~ adjudications.*

* Language from other adopted modifications is not reflected.

V. Non-Legislative Modifications Accepted July 23, 2009 – Effective August 1, 2010 Following Review by the 2010 Legislature

1. Modify the Criminal History Policy for Misdemeanor and Gross Misdemeanor Offenses

The Commission adopted a proposal to replace the Misdemeanor/Gross Misdemeanor List with a policy that counts all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs).

Adopted Modifications to Guidelines Section II.B.3:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and for each non-traffic gross misdemeanor conviction and for each gross misdemeanor driving while impaired or refusal to submit to a chemical test case ~~included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given 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 for criminal vehicular homicide or operation or first degree (felony) driving while impaired: previous violations of Minn. Stats. §§section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 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 or criminal vehicular homicide or operation violations.
 - a. Only convictions of statutory misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case listed in the Misdemeanor and Gross Misdemeanor Offense List (see Section V.) shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

b. Any gross misdemeanor convictions resulting in misdemeanor sentences for offenses not on the targeted misdemeanor list provided in Minn. Stat § 299C.10, subd. 1(e), shall not be used to compute units.

b-c. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, no offender shall be assigned more than one unit.

* e-d. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

~~**II.B.302.** As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or operation and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or operation or first degree (felony) driving while impaired.~~

~~**II.B.303 II.B.302.** The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI-related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.~~

~~**II.B.304.** The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non-traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the~~

* Language from other adopted modifications is not reflected.

~~provisions in II.B.1.).~~

~~**II.B.305 II.B.303.** The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to particularly relevant misdemeanors under existing state statute. The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s). Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), and non-traffic gross misdemeanors and gross misdemeanor driving while impaired or refusal to submit to a chemical test case contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines.~~

~~**II.B.306 II.B.304.** The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21, 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 or criminal vehicular homicide or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.~~

~~**II.B.307.** The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.~~

~~* **II.B.308 II.B.305.** The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585,~~

* Language from other adopted modifications is not reflected.

that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.

* **~~II.B.309~~ II.B.306**. The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.

~~II.B.310~~ II.B.307. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02, will not be used to compute the criminal history score.

~~**II.B.311**. Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2 (1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.~~

* **~~II.B.312~~ II.B.308**. In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.

Deletion of the Misdemeanor and Gross Misdemeanor Offense List:

* ~~*Misdemeanor and Gross Misdemeanor Offense List*~~

The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

~~Animal Fighting — Admission to an animal fight (gross misdemeanor)
343.31 (c)~~

~~Arson in the Fourth Degree
609.5631~~

~~Assault in the Fourth Degree
609.2231, subd. 1, 2a, 4, 5, 6, & 7~~

~~Assault in the Fifth Degree
609.224~~

~~Burglary in the Fourth Degree
609.582~~

~~Carrying Pistol
624.714~~

~~Carrying a Pistol While Under the Influence of Alcohol or a Controlled Substance
624.7142, subd. 6(a)(b)~~

~~Certain Persons Not to Possess Firearms
624.713, subd. 2~~

~~Check Forgery
609.631~~

~~Computer Encryption
609.8912~~

~~Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility)
641.165~~

~~Contributing to Status as a Juvenile Petty Offender or Delinquency
260B.425~~

~~Counterfeiting of Currency
609.632~~

~~Criminal Abuse of Vulnerable Adult (bodily harm)~~

* Language from other adopted modifications is not reflected.

~~609.2325, subd. 3 (a) (4)~~

~~Criminal Sexual Conduct 5th Degree
609.3451~~

~~Criminal Vehicular Homicide or Operation (bodily harm)
609.21, subd. 1a(d)~~

~~Damage to Property
609.595~~

~~Dangerous Dogs — Subsequent violations (gross misdemeanor)
347.55 (c)~~

~~Dangerous Dogs — Dog ownership prohibited (gross misdemeanor)
347.55 (d)(e)~~

~~Dangerous Weapons
609.66~~

~~Dealers in Scrap Metal; Records, Reports, and Registration
325E.21~~

~~Disruption of Funeral Services
609.504~~

~~Domestic Assault
609.2242, subd. 1 & 2~~

~~Emergency Calls and Communications
609.78, subd. 1~~

~~Emergency Calls and Communications — Interference (gross misdemeanor)
609.78, subd. 2~~

~~Facilitating Access to a Computer Security System (gross misdemeanor)
609.8913~~

~~Fleeing a Police Officer
609.487~~

~~Furnishing Liquor to Persons Under 21
340A.503~~

~~Fraudulent or Improper Financing Statements
609.7475~~

~~Harassment/Stalking
609.749, subd. 2 & 8~~

~~Indecent Exposure~~

~~617.23~~

~~Interference with Privacy
609.746~~

~~Letter, Telegram, or Package; Opening; Harassment
609.795~~

~~Malicious Punishment of a Child
609.377~~

~~Obscene or Harassing Telephone Calls
609.79~~

~~Overworking or Mistreating Animals (second or subsequent torture or cruelty)
343.21, subd. 9(a)~~

~~Possession of Small Amount of Marijuana in Motor Vehicle
152.027, subd. 3~~

~~Predatory Offender Carrying a Weapon
624.714, subd. 24~~

~~Receiving Stolen Property
609.53~~

~~Registration of Predatory Offenders
243.166, subd. 5~~

~~Theft
609.52, subd. 2(1)~~

~~Torture or Cruelty to Pet or Companion Animal (substantial bodily harm)
343.21, subd. 9(b)~~

~~Trespass (gross misdemeanor)
609.605~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline — Without claim of
right or consent (gross misdemeanor)
609.6055, subd. 2(a)~~

~~Trespass on Critical Public Service Facility, Utility, or Pipeline — Underground
structure not open to the public (gross misdemeanor)
609.6055, subd. 2(b)~~

~~Unauthorized Computer Access
609.891~~

~~Violation of Harassment Restraining Order
609.748~~

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

Add the Targeted Misdemeanor List:

Targeted Misdemeanor List
(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

According to Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a
misdemeanor violation of:

Driving While Impaired

169A.20

Order for Protection Violation

518B.01

Fifth-Degree Assault

609.224

Domestic Assault

609.2242

Interference with Privacy

609.746

Harassment or Restraining Order Violation

609.748

Indecent Exposure

617.23

2. Modify the Custody Status Policy Related to Gross Misdemeanor Offenses

The Commission adopted a proposal to change the policy for a gross misdemeanor custody status point that applies a point for all non-traffic gross misdemeanors (including DWIs) and misdemeanors which are on the Targeted Misdemeanors List provided for in M.S. § 299C.10 (including DWIs). This will make it consistent with the policy change for handling misdemeanor and gross misdemeanor offenses in criminal history.

Adopted Modifications to Guidelines Section II.B.2:

- * 2. One point is assigned if the offender:
- a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e); or

Comment

II.B.202. *Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony, ~~or non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e),~~ which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction. ~~Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded.~~ Probation, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point.*

II.B.203. *It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, ~~or non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e).~~ Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time*

* Language from other adopted modifications is not reflected.

~~the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.~~

3. Modify the Dates Used for Misdemeanors and Gross Misdemeanor Decay

The Commission adopted a proposal to change the start-date and end-date used to calculate the misdemeanor and gross misdemeanor decay to make it uniform with the dates used for felony decay.

Adopted Modifications to Guidelines Section II.B.3:

3. Subject to the conditions listed below, the offender is assigned one unit

- * c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense. ~~offender was adjudicated guilty for that offense, to the sentencing date for the current offense.~~ However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

~~* **II.B.309.** The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses; however, given that these offenses are less serious, the decay period is 10 years rather than 15 years. ~~Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.~~~~

* Language from other adopted modifications is not reflected.