

Policy Brief

When Current Convictions Become Criminal History: Minnesota's Unusual Approach to Multi-Count Sentencing

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This Policy Brief examines an unusual rule for the early accrual of criminal history at sentencing under the Minnesota Sentencing Guidelines, known as the “*Hernandez* rule,” used in prosecutions with multiple counts not arising from a single course of conduct.¹ The rule treats some or many *current* counts of conviction as though they were *prior* convictions, often boosting the severity of defendants’ presumptive Guidelines sentences.

The *Hernandez* rule departs from the traditional understanding of “recidivism.” The conventional approach across America is that current counts do not qualify as criminal history until a later prosecution and conviction. “Recidivism” is understood to occur after a person has been convicted, sanctioned, and given an opportunity to reform, yet continues to offend.

By accelerating recidivist penalties, *Hernandez* can lengthen presumptive sentence durations and convert presumptive stayed (probation) sentences into prison terms, which increase Minnesota’s prison population and likely contributes to racial disparities in prison rates.

Minnesota’s *Hernandez* Rule

Created in the 1981 Minnesota Supreme Court decision *State v. Hernandez*,² and modified by the Minnesota Sentencing Guidelines Commission (MSGC), the *Hernandez* rule is stated in the Guidelines as follows:

Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced (also known as “Hernandizing”).³

As one leading study described the *Hernandez* rule, “the same crime can count as both a current offense and as a prior conviction.”⁴ This early counting of “prior” convictions raises the number of criminal history points that determine a defendant’s “Criminal History Score” (CHS). Usually, this increases punishment severity by moving presumptive sentences from left-to-right on the Guidelines grid (see Figure 1).

The severity effects of the *Hernandez* rule vary enormously from case to case. MSGC data for 2023–2024 show that 16 percent of *Hernandized* cases resulted in no movement across CHS categories, but the rule also produced 596 cases of lengthened prison terms and 289 cases that crossed the dispositional line from presumptive probation to prison. In 34 cases, *Hernandez* pushed first offenders with no prior records to the maximum CHS of “6 or more.”⁵

Figure 1. Minnesota Sentencing Guidelines Grid, 2026

4.A. Sentencing Guidelines Grid

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

SEVERITY LEVEL OF CONVICTION OFFENSE <i>Example offenses listed in italics</i>		CRIMINAL HISTORY SCORE							Custody Status
		0	1	2	3	4	5	6 or more	
<i>Murder 2nd Degree (intentional)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹	426 363-480 ¹	+20
<i>Murder 2nd Degree (unintentional)</i>	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288	+15
<i>Murder 3rd Degree (drugs); Carjacking 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189	+12
<i>Agg. Robbery 1st Degree; Assault 1st Degree</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129	+10
<i>DWI 1st Degree; Assault 2nd Degree (weapon & SBH)</i>	7	36 31-43	42 36-50	48 41-57	54 46-64	60 51-72	66 57-79	72 62-84 ^{1, 2}	+6
<i>Ineligibly Possess Firearm; Assault 2nd Deg. (weapon)</i>	6	21 18-25	27 23-32	33 29-39	39 34-46	45 39-54	51 44-61	57 49-68	+6
<i>Assault 3rd Degree (SBH); Burglary 2nd Deg. (dwelling)</i>	5	18 16-21	23 20-27	28 24-33	33 29-39	38 33-45	43 37-51	48 41-57	+5
<i>Felony Domestic Assault; Violate No-Contact Order</i>	4	12 12-14	15 13-18	18 16-21	21 18-25	24 21-28	27 23-32	30 26-36	+3
<i>Assault 4th Degree; Vehicle Use w/out Consent</i>	3	12 12-14	13 12-15	15 13-18	17 15-20	19 17-22	21 18-25	23 20-27	+2
<i>Theft of \$5,000 or Less; Check Forgery (\$251-\$2,500)</i>	2	12 12-14	12 12-14	13 12-15	15 13-18	17 15-20	19 17-22	21 18-25	+2
<i>Fleeing a Peace Officer</i>	1	12 12-14	12 12-14	12 12-14	13 12-15	15 13-18	17 15-20	19 17-22	+2

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

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

Illustration. The following explains one application of *Hernandez* under current law, adapted from *State v. Moore*, 340 N.W.2d 671 (Minn. 1983) and *State v. Pittel*, 518 N.W.2d 606 (Minn. 1994).

Defendant is a first offender convicted of 13 counts of check forgery in amounts between \$251 and \$2,500, based on checks cashed on separate days over six months totaling \$4,500. All counts fall in Severity Level 2 on the Guidelines grid. For a single count, with no prior record, the presumptive sentence is 12-14 months of probation.

Scored as “prior” convictions under *Hernandez*, however, each forgery carries 0.5 criminal history points.⁶ Lined up in order of occurrence, Count 1 has a CHS of 0, Count 2's CHS is 0.5, Count 3's CHS is 1, and so on—reaching the maximum CHS of “6 or more” by Count 13. The Hernandez presumptive sentence for a Severity Level 2 offense at maximum CHS is an executed prison term of 18–25 months.

Comments on the Illustration

Proportionality comparison. In this *Hernandez* Illustration, the defendant's presumptive sentence is more severe than the Guidelines provide for first offenders convicted of far more serious crimes. At Severity Level 7, for example, a first offender convicted of second-degree assault (with a dangerous weapon,

inflicting substantial bodily harm)⁷ faces a stayed sentence of 31–43 months. As Figure 2 shows, the Illustration's executed prison term exceeds all stayed sentences for more serious crimes at Severity Levels 3 through 7.

Figure 2. Five Offense-Level Increase in Sentence Severity

SEVERITY LEVEL OF CONVICTION OFFENSE <i>Example offenses listed in italics</i>		CRIMINAL HISTORY SCORE							Custody Status
		0	1	2	3	4	5	6 or more	
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Alternatives to the Hernandez rule. In the Illustration, at least three non-*Hernandez* sentencing options exist under current Minnesota law:

- The defendant could have been sentenced on the most serious of the check forgery counts with the remaining counts used as grounds for an aggravated departure from the presumptive Guidelines sentence.⁸
- If the total dollar amount of the 13 forged checks (\$4,500) had been combined into a single charge of check forgery in an amount over \$2,500, the defendant's conviction would have fallen into Severity Level 3 of the Guidelines with a CHS of 0.⁹ The presumptive Guidelines sentence would have been a stayed sentence of 12-14 months of probation.¹⁰
- If all 13 counts in the Illustration had been sentenced consecutively under current Minnesota law, the presumptive sentence would have been an extended probation term up to 60 months—the statutory maximum probation term for this class of offense.¹¹

Concerns about the *Hernandez* Rule

1. The *Hernandez* rule can accelerate and increase the punitive impact of the Guidelines' Criminal History Score, leading to higher prison rates. It requires only one criminal history point to shift a case one cell to the right on the Guidelines grid. Multiple Hernandezized counts can move cases across the Guidelines grid quickly, with compounding severity effects.

Many of Hernandez's greatest severity impacts occur at the Guidelines "dispositional line" that separates presumptive probation from presumptive prison. At Severity Level 7, a shift of one cell across the line turns a stayed term of 41-57 months into an executed prison sentence of 46–64 months. Even allowing for some

jail time as a possible condition of probation, a sudden presumptive prison sentence in the range of four to five years is a big leap in severity for a single criminal history point. At lower Severity Levels, similar leaps to prison terms of one to several years are possible. In our research, we found no other sentencing guidelines system that matches Minnesota's severity for cases that cross the dispositional line.

The MSGC can estimate future prison rates under the *Hernandez* rule versus proposed alternatives. This would be a window into the rule's current prison-bed costs. Such projections will be essential to an informed reexamination of the rule.¹²

2. The *Hernandez* rule likely contributes to racial disparities in prison rates, which can be tested through Minnesota's established practice of "demographic impact" projections. A large body of evidence shows that criminal history penalties are a major driver of racial disparities in American imprisonment. Impact projections for amendments that softened criminal history penalties in Pennsylvania (2024) and Minnesota (2025) estimated that Black prison rates would fall more than eight times as much as White rates.¹³ We can hypothesize with some confidence that *Hernandez*'s acceleration of the impact of the CHS is a meaningful source of racial disparities in Minnesota's prisons.

Since 2008, the MSGC has regularly prepared demographic impact projections for proposed amendments to the state's Guidelines.¹⁴ Such projections are essential to reconsideration of the *Hernandez* rule.

3. The *Hernandez* rule risks sentencing disparities from variable prosecutorial charging and bargaining decisions. On several occasions, the Minnesota Supreme Court has raised questions about "prosecutorial variability" under different permutations of the *Hernandez* rule and has stated that reexamination of the rule is the MSGC's responsibility. The excerpts below are from three such decisions:

"Logically, there may be a strong argument for ... limiting the use of the *Hernandez* rule in a case such as this where the multiple offenses were all committed against the same victim.... [T]he aim of the limitation would be to limit the effect of prosecutorial variability in charging practices. However, whether or not such a limitation should be adopted is a decision which we believe should be left to the [Sentencing Guidelines] commission."¹⁵

"We have conceded that "there is some disparity in [*Hernandez* cases] stemming from the fact that one prosecutor might let a defendant connected to 50 [crimes] plead to 3 charges ... whereas another prosecutor might want to build up the defendant's criminal history score to six or more using the *Hernandez* method. ... However, in a number of cases we have made it clear that any change must come from the Sentencing Guidelines Commission."¹⁶

"While application of the *Hernandez* method for convictions resulting from undercover drug operations may very well result in such results [manipulation "of investigative or charging procedures so as to achieve a specific sentence" and "racially biased decision-making"] we have repeatedly recognized that arguments concerning disparities in sentencing are more appropriately addressed to the Sentencing Guidelines Commission."¹⁷

4. *Hernandez* sentences can be unmoored from the purposes of proportionate punishment and public safety in individual cases. *Hernandez* can produce presumptive sentences for low-level crimes that overlap with those for far more serious offenses, straining the Guidelines' core purposes of proportionality and public safety. Some first offenders have been sentenced as though they had already earned the maximum CHS, a category meant for the most dangerous and blameworthy recidivists.¹⁸ The resulting punishments may be poorly tailored to rehabilitate first offenders.¹⁹ Indeed, needlessly severe sanctions sometimes produce more crime than they prevent.²⁰

5. In treating current convictions as prior convictions, the *Hernandez* rule is inconsistent with national norms and violates accepted justifications for recidivist penalties. In the vast majority of American jurisdictions, current convictions become prior convictions only after a subsequent prosecution and conviction. For recidivism penalties to apply, a person must first be convicted, sanctioned, and given an opportunity to reform, yet continue to offend. This approach is built into all American sentencing guidelines systems except in Minnesota and Washington.²¹ It is likewise followed in virtually all state recidivist statutes, including Minnesota's.²²

The leading justification for recidivism penalties is twofold: On public-safety grounds, a pattern of recidivism is evidence that a person is a hard target for rehabilitation or deterrence as attempted in earlier sanctions, so greater interventions may be necessary. On retributive grounds, recidivists can be found blameworthy for their failure to take advantage of past interventions and opportunities to reform.

Minnesota honors these principles outside the context of *Hernandez*. In *State v. Huston*, the Court of Appeals rejected a “career offender” sentence requiring five or more prior felony convictions because the defendant’s prior convictions arose from only three prior prosecutions rather than five sequential offense/conviction cycles. The court said that “the sequencing requirement ... serves the general purpose of the statute by permitting five full ‘postconviction opportunities for reform.’”²³ The Court of Appeals in *State v. Spears* similarly reasoned that “The plain language of [Minnesota’s repeat sex-offender] statute, applying only to sequential convictions, grants a defendant two full post-conviction opportunities for reform.”²⁴ Many later decisions have reaffirmed the reasoning in *Huston* and *Spears*.²⁵

6. The *Hernandez* rule outstrips its policy rationale. In the original *Hernandez* decision, three separate prosecutions that could have been sentenced on separate days were consolidated into a single sentencing proceeding. The district court included the earlier offenses in the CHS for the later offenses. The *Hernandez* Court held that this method of sentencing was permissible, explaining, “All the [district] court was trying to do was avoid mere formalities and, in the interests of judicial economy, do in one day what the Guidelines allow to be done in three or more days.”²⁶

The judicial economy rationale has no application to single prosecutions with multiple counts, where there is no process for sentencing separate counts on different days. Neither the Court nor the MSGC has raised an alternative purpose of the *Hernandez* rule, which would be a prerequisite to its reconsideration.

Selected Policy Options for Revisiting the *Hernandez* Rule

1. Amend the Guidelines to exclude current convictions from treatment as prior convictions in the sentencing of multi-count cases; refocus the Guidelines on alternatives to the *Hernandez* rule that already exist in Minnesota law. Currently available alternatives to the *Hernandez* rule include: (1) sentencing on the most serious count with other current counts available as grounds for aggravated departure; (2) combining multiple quantity-based offenses (e.g., those graded by dollar amounts) into a single aggregate count for sentencing; and (3) sentencing multiple convictions consecutively, subject to existing Guidelines controls.

Outside Minnesota, several guidelines systems have created mathematical formulas for the calculation of increased penalties in multi-count cases.²⁷ The MSGC could consider a similar approach.

2. Amend the Guidelines to provide that use of the *Hernandez* rule is within sentencing courts’ discretion; remove current Guidelines language providing that the rule “must” be used. This Guidelines amendment would align with judicial precedent. The Minnesota Supreme Court has never required use of the *Hernandez*

rule. Instead, it has allowed sentencing courts *discretion* to do so.²⁸ In contrast, the effect of current Guideline 2.B.1.e is that the *Hernandez* rule “must” be applied when legally permissible. This peremptory language was introduced in 2012 as part of a stylistic revision of the Guidelines, with no discussion or evident intention of broadening the *Hernandez* rule.²⁹

The Guidelines could also be amended to guide judges’ “*Hernandez* discretion” through presumptions of when the rule should or should not be applied, tailoring the presumptions to specific classes of cases. The Guidelines already take this approach for concurrent and consecutive sentences.³⁰

3. Limit the operation of the *Hernandez* rule to the two most serious counts. The earlier count would be treated as criminal history when calculating the presumptive sentence for the later count. This would expand the current two-count limit in Guideline 2.B.1.e(2) (single-course-of-conduct cases with multiple victims), which was adopted as a “check on prosecutorial variability” in use of *Hernandez*.³¹ In *State v. Moore*, for example, the Minnesota Supreme Court noted a “strong argument” that the two-count limit should be used to address prosecutorial variability in multiple-incident cases with a single victim.³²

4. For quantity-based offenses (e.g., those graded by dollar amounts), require the consolidation of multiple current convictions into a single count for purposes of sentencing. This option is based on an existing alternative to the *Hernandez* rule.³³ Converting the “alternative” into a “requirement” could substantially limit *Hernandez*’s effects in this category of cases.

5. Exclude the use of *Hernandez* against first offenders or limit its effect. Possible limits include Policy Option 3 and/or Option 6 if those options are not adopted across the board.

6. Block the use of *Hernandez* to push presumptive sentences across the dispositional line, with selected exceptions. This topic is of heightened concern in Minnesota because of the Guidelines’ unique harshness when presumptive penalties take a single step across the dispositional line. Certain serious offenses might warrant exceptions to this approach.

7. Put a ceiling on *Hernandez* when application of the rule would yield a presumptive sentence of greater severity than the presumptive sentence if all offenses were sentenced consecutively. In most American jurisdictions, consecutive sentences are the route to the most severe overall penalties in multi-count cases. To guard against extreme applications of the *Hernandez* rule, use of the consecutive-sentencing benchmark as a severity cap would be a step toward consistency with national norms.

Endnotes

¹ A limited version of the *Hernandez* rule applies in cases that arise from a single course of conduct in which there were multiple victims. There, only the two most serious counts are Hernandezized, with the earlier of the two counts treated as criminal history when calculating the presumptive sentence for the later count. Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Guideline 2.B.1.e(2).

² *State v. Hernandez*, 311 N.W.2d 478 (Minn. 1981).

³ Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Guideline 2.B.1.e.

⁴ Richard S. Frase, Julian V. Roberts, Rhys Hester, & Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 39.

⁵ Data from MSGC, *Hernandizing* (PowerPoint Presentation, June 23, 2026). This zero movement statistic comes from a variety of causes. If *Hernandez* adds only 0.5 points to a defendant's CHS, this is not enough by itself to push the case into the next cell because half points are rounded down in calculation of the CHS. Also, *Hernandez* has little or no effect on defendants who already had a lengthy criminal history before the current prosecution, cases in which mandatory sentencing laws dictate penalties that outstrip any *Hernandez* severity effects, or cases in which the most serious offense occurs early in the chronology of multiple current offenses and receives little or no boost in its CHS.

⁶ See Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), table in Guideline 2.B.1.a.

⁷ Minn. Stat. § 609.222, subd. 2 (2026).

⁸ This alternative was recognized in *State v. Pittel*, 518 N.W.2d 606, 608 (Minn. 1994) ("where ... the *Hernandez* rule is used, as here, it is not proper to consider all of the underlying conduct of all of the offenses as bearing on the decision to depart durationally from the presumptive sentence for an individual offense. Stated differently, a prosecutor may not have it both ways").

⁹ Minn. Stat. § 609.631, subd. 4(2); Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Guideline 5.B, table at 117 (check forgery in an amount greater than \$2,500 assigned to Guideline Severity Level 3).

¹⁰ In cases involving dollar losses, the Minnesota Supreme Court has approved this aggregation approach as an alternative to the *Hernandez* rule. See *State v. Lalli*, 338 N.W.2d 419 (Minn. 1983); *State v. Litzinger*, 394 N.W.2d 803, 805 n. 1 (Minn. 1986), discussed in note 33.

¹¹ Minn. Stat. § 609.135, subd. 2 (with exceptions for designated serious crimes, a stayed felony sentence "shall be for not more than five years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is less"). See *State v. Aleshire*, 451 N.W.2d 66, 68 (Minn. App. 1990) ("There is no statutory prohibition against consecutive sentencing" of stayed sentences but the total length of consecutive terms must be within the statutory limits of Minn. Stat. § 609.135, subd. 2); *Pageau v. State*, 820 N.W.2d 271 (Minn. App. 2012) (recognizing that Minnesota courts have allowed "the stacking of consecutive probationary periods").

¹² MSGC research staff recently reported, "While not yet calculated, prison bed impacts of using [*Hernandez* versus the conventional approach to accrual of criminal history] are expected to be substantial." MSGC, *Hernandizing* (PowerPoint Presentation, June 23, 2026), Slide 23.

¹³ See Richard S. Frase, Julian V. Roberts, Rhys Hester, & Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 112-13 & table 12.5 (showing that Black/White disparities in prison versus probation sentences for similar crimes are heavily driven by criminal history in all four states studied using 2012 data; the percentage of Black/White disparities in imprisonment "explained" by recidivist penalties ranged from 42 to 58 percent across Kansas, Minnesota, North Carolina, and Washington); Pennsylvania Commission on Sentencing, Resource Utilization: Proposed 8th Edition Sentencing Guidelines (April 5, 2023); Minnesota Sentencing Guidelines Commission, Sentencing Guidelines Comprehensive Review: Impact of September Consensus Policy Package (October 2, 2025); Kevin R. Reitz, *Criminal History Reform in Sentencing Guidelines: Examples from Minnesota and Pennsylvania*, Presentation at the Annual Meeting of the American Society of Criminology (November 13, 2025) (putting estimates from Pennsylvania and Minnesota into compatible form; calculating that Pennsylvania's projected "drop in the Black prison rate would reduce it from 1,088 to 779 per 100,000 for a net drop of -309 per 100,000 (roughly 8X the projected drop in the White prison rate)" and reporting that Minnesota's "estimated drop in the Black prison rate would reduce it from 950 to 858 per 100,000 for a net drop of -92 per 100,000 (roughly 8X the projected drop in the White prison rate)"). See also Nazgol Ghandnoosh, Bobby Boxerman, & Celeste Barry, *Re-Punished for the Past: How Criminal Records Increase Prison Terms and Racial Injustice* (The Sentencing Project, 2026), at 14 ("Our findings

echo prior research showing that African Americans are excessively impacted by the lengthening of sentences due to criminal records, since they are more likely to have criminal records than white individuals.”); Julian V. Roberts, Gabrielle Watson, & Rhys Hester, *Sentencing Members of Minority Groups: Problems and Prospects for Improvement in Four Countries*, in Michael Tonry ed., 52 Crime and Justice 343, 348 (2023) (“Guidelines have ... assigned great weight to prior convictions at sentencing, and this has exacerbated [racial] disparities.”).

¹⁴ See MSGC, Demographic Impact Statement Policy, Version 2.1 (eff. February 9, 2023).

¹⁵ *State v. Moore*, 340 N.W.2d 671, 673 (Minn. 1983).

¹⁶ *State v. Pittel*, 518 N.W.2d 606, 608 (Minn. 1994), quoting *State v. Litzinger*, 394 N.W.2d 803, 806 (Minn. 1986).

¹⁷ *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). See also *State v. Williams*, 771 N.W.2d 514, 524 (Minn. 2009) (“we decline to step in where the [Sentencing] Commission has decided not to act. It is the proper function of the Commission to determine whether a *Hernandez* prohibition should be created”).

¹⁸ See *State v. Moore*, 340 N.W.2d 671 (Minn. 1983) (first offender sentenced on eight counts of aggravated [check] forgery against her employer “based on separate acts of forgery occurring on eight different dates in February, March and April of 1982 (checks totaling \$2,608.35)”; *State v. Pittel*, 518 N.W.2d 606 (Minn. 1994) (first offender charged with 13 counts of theft based on payments received from the same victim; this would have yielded the maximum CHS of “6 or more” but seven counts were dismissed on appeal; accordingly, defendant’s CHS under *Hernandez* was 5 rather than “6 or more”); *State v. Bakken*, 883 N.W.2d 264 (Minn. 2016) (first offender charged with seven counts of possession of child pornography based on seven images downloaded on different dates was placed at the highest CHS of “6 or more”). MSGC data for 2023-2024 show 34 cases of this kind over the two-year period. MSGC, *Hernandizing* (PowerPoint Presentation, June 23, 2026).

¹⁹ For one such criticism, see *State v. Moore*, 340 N.W.2d 671 (Minn. 1983) (first offender sentenced to executed prison term of 27 months for eight counts of check forgery against her employer totaling \$2,608). Dissenting Justice Wahl wrote, “With no prior criminal record, with no prior contact with the criminal justice system, Mary Moore was treated as a repeat offender, as a hardened criminal. ... There is no equity in sentencing here, nor is there any indication that incarceration is necessary to achieve the purpose of the sentence. Rather, the record demonstrates that Mary Moore, remorseful, working two jobs at the time of sentencing, will bend every effort to make restitution as she has agreed”). *Id.* at 674-75.

²⁰ See Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Guideline 1.A.1 (“In some cases, [public safety] is furthered by reasonable caution in the choice of sanctions that could hinder reintegration into the law-abiding community.”); *id.*, Guideline 1.A.6 (“sanctions used in sentencing those convicted of felonies should be the least restrictive necessary to achieve the purposes of the sentence”).

²¹ Richard S. Frase, Julian V. Roberts, Rhys Hester, & Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 92. Guidelines systems that take the conventional approach to the accrual of criminal history include Arkansas, Delaware, District of Columbia, Kansas, Maryland, Massachusetts, North Carolina, Oregon, Tennessee, Utah, Virginia, and the federal system. *Id.* at 91-94.

²² For example, under California’s three strikes law, Cal. Penal Code § 667(d) (2026), multiple current convictions in a single proceeding may not be used as “prior convictions” or “strikes” for sentencing in the current proceeding. Accordingly, it is not possible for a first offender to “strike out” in a prosecution that results in current convictions of three or more violent felonies that would qualify as “strikes” in subsequent prosecutions. See *People v. Benson*, 954 P.2d 557, 563 (Cal. 1998) (“the Three Strikes law has, as its central focus, the status of the defendant as a repeat felon—i.e., whether the defendant proceeded to commit a subsequent felony after already having been convicted of one or more serious or violent felonies”). Florida’s omnibus statute addressing various types of persistent offenders expressly adopts the sequential-conviction approach in its definition of “prior felony.” Fla. Stat. § 775.084(5) (2026). See also La. Rev. Stat. § 15:529.1(A) (2026) (Sentences for Second and Subsequent Offenses) (“Any person who, after having been convicted within this state of a felony, ... thereafter commits any subsequent felony within this state, upon conviction of said felony” is subject to recidivist penalties under this provision). We have found only one exception to this pattern: Ariz. Rev. Stat. § 13-703(A) (2026) (under state’s repetitive-offender law, “If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender ... for the first offense and as a category one repetitive offender for the second and subsequent offenses.”).

²³ *State v. Huston*, 616 N.W.2d 282, 283 (Minn. App. 2000).

²⁴ *State v. Spears*, 560 N.W.2d 723, 727-28 (Minn. App. 1997).

²⁵ See *State v. Kemokai*, 2015 WL 3648854 (Minn. App. 2015); *State v. Jackson*, 2013 WL 6152158 (Minn. App. 2013); *Hardesty v. State*, 2010 WL 5155608 (Minn. App. 2010); *Jones v. State*, 2010 WL 2899360 (Minn. App. 2010); *Hardesty v. State*, 2009 WL 3172184 (Minn. App. 2009); *State v. Jones*, 2008 WL 5334401 (Minn. App. 2008); *State v. Jackson*, 2008 WL 170765 (Minn. App. 2008); *State v. Castillo*, 2008 WL 132934 (Minn. App. 2008); *State v. Williams*, 2007 WL 2600824 (Minn. App. 2007); *State v. Lockhart*, 2004 WL 1153024 (Minn. App. 2004).

²⁶ *State v. Hernandez*, 311 N.W.2d 478, 481 (Minn. 1981).

²⁷ Richard S. Frase, Julian V. Roberts, Rhys Hester, & Kelly Lyn Mitchell, *Criminal History Enhancements Sourcebook* (Robina Institute of Criminal Law and Criminal Justice, 2015), at 94 & table 10.1 (surveying formulas for sentence enhancements in multi-count cases in four states and the federal system, including the addition of points to defendants' total point score or severity level and formulas for adding defined percentages of guidelines prison terms for counts other than the lead offense).

²⁸ See *State v. Pittel*, 518 N.W.2d 606, 608 (Minn. 1994) (stating that the district court "was free to use the *Hernandez* method" when it sentenced defendant for multiple theft convictions); *Patchen v. State*, 2020 WL 3957253, at *3 (Minn. App. 2020) ("the district court was not required to use the *Hernandez* method. But the decision to do so lies within a district court's discretion.").

²⁹ See MSGC, Guidelines Revision Project: Adopted Modifications (April 2012) (describing project's goal as "revising the Guidelines to make them easier to read, use, and understand," not to make substantive changes).

³⁰ Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Guideline 2.F.

³¹ Minnesota Sentencing Guidelines & Commentary (eff. August 1, 2026), Comment 2.B.110 (explaining MSGC's adoption of Guideline 2.B.1.e(2): "Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission limited consideration to the two most severe offenses in such situations.")

³² *State v. Moore*, 340 N.W.2d 671, 673 (Minn. 1983) ("Logically, there may be a strong argument for ... limiting the use of the *Hernandez* rule in a case such as this where the multiple offenses were all committed against the same victim. ... [T]he aim of the limitation would be to limit the effect of prosecutorial variability in charging practices.").

³³ *State v. Lalli*, 338 N.W.2d 419, 421 (Minn. 1983) (on prosecutor's motion, six counts of bribery in amounts varying from \$20 to \$500 were consolidated into one count, preventing use of the *Hernandez* method); *State v. Litzinger*, 394 N.W.2d 803, 805 n. 1 (Minn. 1986) (seven counts of burglary with total losses of \$16,700) ("If all the charges against defendant had been consolidated into one charge for sentencing purposes (in which case *Hernandez* would have no application), it might have been proper to lump all the offenses together and say that the underlying conduct was particularly serious.").