

Comprehensive Review Steering Committee Report

July 30, 2025

The Comprehensive Review Steering Committee consisted of Commission Chair Kelly Lyn Mitchell, Commission Vice-Chair Michelle A. Larkin, and Commission members David Knutson, Kyra Ladd, Cathryn Middlebrook, and Latonya Reeves. The Steering Committee met nine times between December 2024 and July 2025, with Judge Knutson’s retirement occurring before the ninth meeting. The Steering Committee’s original timeline is attached as Appendix 1 (p. 35) and a progress update is attached as Appendix 2 (p. 37).

The Steering Committee proposes the following nine* changes to the Sentencing Guidelines. A brief rationale for each change is set forth here, with the complete proposed text beginning on page 5. While each proposal’s rationale is expressed separately, the Steering Committee makes these proposals as a package, and was mindful of the offsetting effects of various proposals when putting them together.

- 1. Change the felony decay period from 15 to 10 years p. 6**
- 2. Change the misdemeanor decay period from 10 to 7 years p. 13**

These proposals reduce the decay periods—currently 15 years for felony offenses and 10 years for gross misdemeanors and misdemeanors—to 10 and 7 years for felonies and misdemeanors, respectively. For felonies, the time period will continue to start at expiration of sentence if it was executed, or from the date of sentencing if it was stayed. For gross misdemeanors and misdemeanors, the time period will continue to start at the time of sentencing.

These proposals bring Minnesota more in line with other states that use a decay period and focus the punishment more on the current offense. Most states that utilize decay periods cap out at 10 years; Minnesota is one of three jurisdictions with the longest decay periods. Letting old offenses decay focuses the punishment more heavily on the current offense and recognizes that the individual has already been punished and completed the sentence for the prior offense. Further, research suggests

* A tenth proposal—to move Failure to Register as a Predatory Offender from the Sex Offender Grid to the Standard Grid—was favorably discussed by the Steering Committee, but no definite severity-level ranking(s) had been agreed upon by the date of this report.

that after 7 to 10 years of being crime-free, a prior offense has less validity in predicting likelihood of reoffense; the person’s risk to commit an offense is similar to that of any other individual in society.

3. Eliminate special rules for counting DWIs in misdemeanor criminal history pp. 14, 21

This proposal eliminates two special rules related to counting misdemeanor and gross misdemeanor DWIs in criminal history. The complexity of these rules is great, and their benefit is slight. The first rule, found in 2.B.3.g, doubles the one-unit weight, and removes the one-point cap, for prior misdemeanor and gross misdemeanor DWIs when the current offense is felony DWI or CVH. With the advent of felony DWI, very few defendants have enough prior misdemeanor or gross misdemeanor DWIs to implicate this rule. The second rule, found in 2.B.6.c, is an extension of the general rule that predicate misdemeanors and gross misdemeanors are excluded from the criminal history of the offense they enhance: The misdemeanor and gross misdemeanor DWIs that enhanced the defendant’s first felony DWI to a felony are also excluded from the criminal history of every subsequent DWI that is a felony due to that first felony DWI. This, too, is a complex and uncommonly used rule.

As part of the elimination of 2.B.6.c, this proposal takes advantage of the opportunity to improve the organization of the Guidelines: 2.B.6.a—which pertains to the use of predicate misdemeanors and gross misdemeanors in criminal history—is moved into section 2.B.3, where it logically belongs; and 2.B.6.b, which is now unnecessary, is deleted.

4. Eliminate juvenile points from the criminal history score..... p. 16–18

This proposal removes the juvenile-point policy (2.B.4) from the Guidelines, but leaves unchanged the policies that count convictions resulting from Extended Jurisdiction Juvenile (EJJ) or adult-certification proceedings among the adult felony points. Presently, juvenile adjudications for offenses that, if committed by an adult, would have been felonies may contribute up to two points to the criminal history score. The policy is meant to identify young adult felons whose criminal careers were preceded by felony-type offenses committed as a juvenile. As a result of the policy’s limited application, few individuals meet the qualifications for juvenile points. Moreover, Dr. Laskorunsky’s [research](#) indicated that this component is not significantly predictive of future offending, but its removal will reduce sentencing disparity.

5. Specify state’s burden to prove out-of-state criminal history..... p. 18

The Commission has received feedback indicating that the rule for counting out-of-state criminal history needs to be simplified. It is difficult to manage because it requires matching the elements of the out-of-state offense to a Minnesota equivalent and then assigning proper weight based on the offense level for the Minnesota equivalent and the offense imposed. Currently, this burden is often falling on probation officers. The Steering Committee considered multiple alternatives, including not counting this type of history at all, or only counting felonies. However, there were drawbacks in each approach, such as failing

to address frequent criminal behavior in areas that border other states, and differences in how states define felonies and misdemeanors. Ultimately, the Steering Committee concluded that existing rule appropriately balances these interests and should be retained. The difficulty in this rule arises from misplacing the burden for proving the existence of out-of-state criminal history on probation officer. Case law clearly places this burden on the prosecutor. Thus, the amendments are aimed at clarifying that burden so that the work shifts from the probation officer to the prosecutor.

6. Convert custody status to a durational increase pp. 6–12, 23–25, 28–31

This proposal removes the custody-status point from criminal-history score calculation (section 2.B) and replaces it with a new custody-status durational increase (in section 2.C). The amount of the increase is determined by a new column on the grids. The result is intended to be identical to the status quo, except that (1) custody status will alter only duration, not disposition; (2) for those at maximum criminal history, the durational increase will not be limited to three months, but will vary by the severity level of the current offense; (3) no waiver is permitted; and (4) the durational increase will be uniform for each severity level—something that is not now true of the Sex Offender Grid. Regarding recent appellate cases, the proposal explicitly adopts the Minn. Court of Appeals’ rule in *Beganovic* (no impact from custody for a low-level felony, gross misdemeanor, or misdemeanor) and implicitly adopts the Minn. Supreme Court’s rule in *Woolridge Carter* (stay-of-adjudication probation may qualify as custody status). The Comments associated with this proposal have not yet been drafted.

7. Add new language focusing courts on logic, rather than factor class, in departure decisions p. 26

Currently in case law, durational departures are based upon offense-related factors, while dispositional departures are often based on offender-related factors. The Criminal Benchbook explains it this way:

Offense-related factors support whether the defendant’s conduct was significantly more or less serious than that typically involved in the commission of the crime. *See State v. Rund*, 896 N.W.2d 527 (Minn. 2017) (finding that terroristic threats made through social media were not less serious than threats made by more traditional means). Offender-related factors focus on the individual and whether the presumptive sentence would be best for the offender and society (*e.g.*, amenability to probation, remorse). *State v. Heywood*, 338 N.W.2d 243 (Minn. 1983); *State v. Allen*, 706 N.W.2d 40 (Minn. 2005).

It is possible that this case law is driving some of the high dispositional departure rates. If the Guidelines allowed offender-related factors to also drive durational departures, we might see a shift in departure types to allow for prison sentences in some additional cases, with shortened durations. This proposal adapts language from from McCarr & Nordby, 9 Minn. Prac., Criminal Law & Procedure § 36:42 (4th ed.), directing sentencing courts ultimately to rely on reason and logic in determining whether a departure factor supports a particular departure decision.

8. Add new mitigated departure factor for first offenders p. 28

To the nonexclusive list of factors that may be used as a reason for a mitigated departure, this proposal adds a new factor: the lack of any prior criminal conviction or stay of adjudication. This proposal recognizes [research](#) showing that true first-time offenders—as opposed to those at technical scores of zero, but with priors—have a substantially lower recidivism risk, and are generally considered less blameworthy, than repeat offenders. The factor is not proposed to be available if the current offense is ranked at severity level 10 or 11 on the Standard Grid or is on the Sex Offender Grid.

9. Add ranges to shaded grid cells; revamp example offenses pp. 22, 29–31

To reduce confusion, mathematical errors, and durational departures, this proposal places ranges in the shaded areas of the grids. This proposal also improves the grids’ example offenses to better reflect practice and/or convey the rationality of how the offenses are ranked against each other.

Key to changes:

- Added text is red and underlined.
- Deleted text is ~~red and stricken~~.
- Moved text is green and double-underlined.
- Removed text is ~~green and double-stricken~~.
- Deleted text within moved text is ~~green, double-underlined, and stricken~~.

Minnesota Sentencing Guidelines and Commentary

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2. Determining Presumptive Sentences

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B. Criminal History

The horizontal axis on the Sentencing Guidelines Grids is the criminal history score. An offender's criminal history score is the sum of points from eligible:

- prior felonies; and
- ~~custody status at the time of the offense;~~
- prior misdemeanors and gross misdemeanors; and
- ~~prior juvenile adjudications.~~

This section details the requirements for calculating the criminal history points in each of these areas. This section also details the requirements for calculating criminal history points for convictions from jurisdictions other than Minnesota and convictions for enhanced felonies.

* * *

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

* * *

- c. Felony Decay Factor. In computing the criminal history score, a prior felony sentence or stay of imposition following a felony conviction must not be used if all the following, to the extent applicable, occurred before the date of the current offense:

- (1) the prior felony sentence or stay of imposition expired or was discharged;
- (2) a period of ~~fifteen-ten~~ years elapsed after the date of the initial sentence following the prior conviction; and
- (3) if the prior felony sentence was executed, a period of ~~fifteen-ten~~ years elapsed after the date of expiration of the sentence.

* * *

Comment

* * *

2.B.113. *The Commission established a “decay factor” for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences and stays of imposition, but also the age of the sentences and stays of imposition. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition will not be counted in criminal history score computation if ~~fifteen-ten~~ years has elapsed from the prior sentencing date (or from the date the prison sentence, if executed, expired) to the date of the current offense, provided the offender was then no longer on supervision for the prior sentence. If the offender received a stay of imposition for the prior offense, that sentencing date marks “the date of the initial sentence,” even if a stay of execution subsequently occurred as the result of, e.g., a probation violation. While this procedure does not include a measure of the offender’s subsequent criminality, it has the overriding advantage of accurate and simple application, while also ensuring that prison offenses do not decay before probation offenses.*

* * *

2. Custody Status at the Time of the Offense.[Reserved.]

- a. ~~One or One-Half Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1), (2), and (3)(ii) or (iii) are met. In all other cases~~

when the conditions in paragraphs (1) through (3) are met, assign **one-half** custody status point:

~~(1) The offender was under one of the following custody statuses at the time the current offense was committed:~~

- ~~(i) probation;~~
- ~~(ii) parole;~~
- ~~(iii) supervised release;~~
- ~~(iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);~~
- ~~(v) release pending sentencing;~~
- ~~(vi) confinement in a jail, workhouse, or prison pending or after sentencing; or~~
- ~~(vii) escape from confinement following an executed sentence.~~

~~(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction.~~

~~(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:~~

- ~~(i) a felony currently assigned a severity level ranking, on the Offense Severity Reference Table, of 1 or 2 on the Standard Grid or D1 or D2 on the Drug Offender Grid, a felony from a jurisdiction other than Minnesota equivalent to an offense currently ranked at one of those severity levels, or an extended jurisdiction juvenile (EJJ) conviction for an offense currently ranked at one of those severity levels;~~
- ~~(ii) any other felony;~~
- ~~(iii) any other EJJ conviction;~~
- ~~(iv) a non-traffic gross misdemeanor;~~
- ~~(v) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or~~
- ~~(vi) a targeted misdemeanor.~~

~~(4) Assigning Points to Offenses Committed Over Time. Assign one or one-half custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:~~

- ~~(i) multiple offenses are an element of the conviction offense; or~~
- ~~(ii) the conviction offense is an aggregated offense.~~

~~b. Two Custody Status Points. Assign **two** custody status points if:~~

~~(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166); and~~

~~(2) the offender qualifies for one custody status point, as described in section a, above, for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).~~

~~c. Additional Duration. An **additional three months** must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, when:~~

~~(1) at least one-half custody status point is assigned; and~~

~~(2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more).~~

~~Three months must also be added to the lower and upper end of the range provided in the appropriate cell on the applicable Grid.~~

~~If the current conviction is an attempt, conspiracy, or other offense with a sentence modifier that reduces the presumptive sentence, the three months must be added to the cell duration before the duration is reduced as outlined in section 2.G. The presumptive duration, however, cannot be less than one year.~~

~~d. No Custody Status Points Assigned. The offender must not be assigned custody status points when:~~

~~(1) The offender was committed for treatment or examination under Minn. R. Crim. P. 20.~~

~~(2) The offender was on juvenile custody status other than for an extended jurisdiction juvenile (EJJ) conviction, at the time the adult felony was committed.~~

~~(3) The offender was on custody status for a misdemeanor or gross misdemeanor DWI committed when the offender was 16 or 17 years old, and the DWI was processed in adult court under Minn. Stat. § 260B.225, subds. 3 and 8.~~

~~e. Waiver. Subject to the limitations in paragraph (4) below, the court, on its own motion or on the motion of a party, may, but is not required to, waive assignment of a custody status point or half-point pursuant to section 2.B.2, provided the offender establishes that granting a waiver is consistent with public safety. Specifically, the court has the discretion, but is not required, to grant a waiver if the offender establishes that waiver is consistent with public safety and promotes the traditional purposes of sentencing which are retribution, incapacitation, deterrence, restitution, and rehabilitation. See Minn. Stat. § 244.09. In considering rehabilitation, the court may examine the following:~~

~~(1) Whether the offender has consistently utilized available probation services, such as drug, alcohol, and psychological treatment services, and has otherwise been in substantial compliance with the conditions of probation, parole, or conditional or supervised release, apart from the commission of the current offense, for the past twelve months;~~

~~(2) Whether the current offense represents an escalation of criminal activity; and~~

~~(3) Whether the offender has made any progress toward rehabilitation and reentry into society, such as additional education and/or vocational training.~~

~~(4) The court may not, however, waive assignment of a custody status point or half point if either the current offense or a custody status offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. As used within this paragraph, "custody status offense" means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above:~~

- ~~(i) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of 8, 9, 10, or 11 on the Standard Grid;~~
- ~~(ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166);~~
- ~~(iii) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of D8 or D9 on the Drug Offender Grid;~~
- ~~(iv) an offense listed in section 8, Severe Violent Offense List;~~
- ~~(v) Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b)); or~~
- ~~(vi) an attempt or conspiracy to commit one of these offenses.~~

Comment

~~**2.B.201.** The basic rule assigns offenders one or one-half point if they were under some form of eligible criminal justice custody status when they committed the offense for which they are now being sentenced.~~

~~**2.B.202.** The Commission intended to avoid criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H or I offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point.~~

~~**2.B.203.** In determining whether to grant a waiver in a particular case, the primary consideration is public safety. In this context, public safety means protecting the public from crime. The court should consider the values of retribution, incapacitation, deterrence, restitution and rehabilitation. In doing so, the court should apply a balanced approach in which all five values are examined and applied. For rehabilitation, the court may also consider the three factors listed in section 2.B.2.e in order to examine the whole person. When custody status is waived, the presumptive sentence will~~

~~be calculated without the addition of the waived custody status point, or half point, in the criminal history score. Thus, provided the processes of section 2.B.2.e are followed, granting a waiver of custody status for the current offense does not, in itself, constitute a departure from the Sentencing Guidelines.~~

~~**2.B.204.** Commitments under Minn. R. Crim. P. 20, and juvenile custody status are not included because, in those situations, there has been no conviction. 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 (EJJ) conviction.~~

~~**2.B.205.** The custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test, gross misdemeanor reckless driving, or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, an offender who commits a new felony while on pre-trial diversion or pre-trial release on another charge does not get a custody status point. Likewise, offenders serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), do not receive a custody status point, even if the court imposed the misdemeanor sentence upon conviction of a gross misdemeanor or felony.~~

~~**2.B.206.** As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired (DWI) offenses and the serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses.~~

~~**2.B.207.** The most problematic consequence of a Criminal History Score of 7 or more (in excess of the maximum points differentiated by the Sentencing Guidelines Grids) is that no additional penalty accrues for engaging in felonious behavior while under custody supervision. For example, if an offender has a Criminal History Score of 7 and is released pending sentencing for a Severity Level 3 offense, and he or she commits another Severity Level 3 offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. A presumption exists against consecutive sentences for most property offenses, and therefore no additional penalty results when this situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.~~

~~**2.B.208.** While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above seven is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current conviction offense. Criminal history is of secondary importance, and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grids and with the special provision for maintaining the impact of the custody status provision. The Commission deems further differentiation unnecessary to achieve proportionality in sentencing.~~

~~**2.B.209.** The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, offenders should receive a custody status point if they become subject to one of the custody status types listed in 2.B.2.a(1) at any point during the time period in which the offenses occurred. While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.~~

~~**2.B.210.** When offenders on any custody status condition listed in section 2.B.2.b for a sex offense commit another sex offense, they are assigned an additional custody status point. The Commission believes that offenders who commit a subsequent sex offense pose so significant a risk to public safety that their criminal history scores should be enhanced to reflect this risk. This policy does not apply to the offense of Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).~~

~~**2.B.211.** Assign a custody status point to an offender on any custody status type who absconds and commits a new felony offense. The custody status type depends on the form of supervision that exists when the offender commits a new offense. For example, assign a custody status point to an offender who absconds from supervised release and commits a new felony offense. The custody status type would be "supervised release."~~

3. Prior Gross Misdemeanors and Misdemeanors. Prior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points. Four units equal one criminal history point; give no partial point for fewer than four units. Determine units as specified in this section.

- a. General Assignment of Units. ~~Except as provided in paragraph g, assign~~ Assign the offender one unit for each prior conviction of the following offenses provided

the offender received a stayed or imposed sentence or stay of imposition for the conviction before the current sentencing:

- (1) targeted misdemeanor, as defined in Minn. Stat. § 299C.10, subd. 1(e);
 - (2) non-traffic gross misdemeanor;
 - (3) gross misdemeanor driving while impaired;
 - (4) gross misdemeanor refusal to submit to a chemical test;
 - (5) gross misdemeanor reckless driving;
 - (6) a felony conviction resulting in a misdemeanor or gross misdemeanor sentence.
- b. Gross Misdemeanors Sentenced as Misdemeanors. A gross misdemeanor conviction resulting in a misdemeanor sentence for an offense not defined as a targeted misdemeanor under Minn. Stat. § 299C.10, subd. 1(e) must **not** be used to compute units.
- c. Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minn. Stat. §§ 152.137, 609.585, or 609.251, the offender must not be assigned more than one unit.
- d. Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, assign only the two most severe offenses units in criminal history.
- e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ~~ten~~-seven years have elapsed between the date of the initial sentence following the prior conviction and the date of the current offense. However, misdemeanor sentences that result from

the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

- f. Maximum Assignment of Points. ~~Except as provided in paragraph g, an An~~ offender cannot receive more than one point for prior misdemeanor or gross misdemeanor convictions.
- ~~g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes. For Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction), assign no misdemeanor units to the qualified prior driving offense that was used to increase the statutory maximum penalty.~~
- ~~a.g. Enhanced Felonies. When the current offense is a felony solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, do not assign units for the prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.~~
- h. Prior Misdemeanor or Gross Misdemeanor Driving While Impaired (DWI) Committed by Juvenile Offenders. Assign no units under this section if the offender was 16 or 17 years old when the prior misdemeanor or gross misdemeanor DWI was committed, and the DWI was processed in adult court under Minn. Stat. § 260B.225, subds. 3 and 8.

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~~**2.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. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 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.~~

~~When the current offense is a conviction under Minn. Stat. § 609.2112, subd. 1(b) (Death, and Qualified Prior Conviction), or § 609.2114, subd. 1(b) (Death to an Unborn Child, and Qualified Prior Conviction), the Commission excluded consideration of the qualified prior driving offense, if a misdemeanor or gross misdemeanor, from the criminal history score because, by virtue of the conviction offense, the qualified prior conviction has been accounted for in the enhanced penalty.~~

2.B.601-2.B.304. A number of instances exist in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior misdemeanor or gross misdemeanor offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases, the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$500 but less than \$1,000 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.

* * *

2.B.306. *The Commission also adopted a “decay” factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated for felony offenses; however, given that these offenses are less serious, the decay period is ~~10~~seven years rather than ~~15~~ten.*

* * *

2.B.308. *When multiple misdemeanor or gross misdemeanor sentences arose 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 adjudications~~.*

4. Prior Juvenile Adjudications.—[Reserved.]

~~a. Assignment of Points for Juvenile Adjudications. Assign an offender one point for every two adjudications for felony offenses the offender committed, and for which the offender was prosecuted as a juvenile, provided that:~~

~~(1) each adjudication must have been for a separate offense or must have involved separate victims in a single course of conduct, except as provided in paragraphs c and d below; and~~

~~(2) the juvenile adjudications must have been for offenses committed after the offender’s fourteenth birthday; and~~

~~(3) the offender was under the age of twenty-five when the offender committed the current felony.~~

~~b. Maximum Points for Juvenile Adjudications. An offender may receive only **one point** for juvenile adjudications as described in this section, except that the point limit does not apply to juvenile adjudications for offenses for which the Sentencing Guidelines would presume imprisonment if the offenses had been committed by an adult. Make this determination regardless of the criminal history score, and include offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section 2.C.~~

- c. ~~Single Course of Conduct / Multiple Sentences.~~ When multiple adjudications for a single course of conduct were imposed under Minn. Stat. §§ 152.137, 609.585, or 609.251, only one offense may be used in the criminal history calculation.
- d. ~~Single Course of Conduct / Multiple Victims.~~ When the prior adjudications involve multiple offenses arising from a single course of conduct involving multiple victims, include only the two most severe offenses in criminal history.

Comment

~~**2.B.401.** Juvenile history is included in the criminal history score to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history score. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.~~

~~**2.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.~~

~~**2.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.~~

~~**2.B.404.** The juvenile adjudications must result from offenses committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date of adjudication to eliminate variability in application based on differing juvenile court practices.~~

~~**2.B.405.** Juvenile adjudications will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 when they committed the felony 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.~~

~~**2.B.406.** The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 point on the basis of prior juvenile adjudications. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the Guidelines would presume imprisonment, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or I), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. 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 are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.~~

~~**2.B.407.** To provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with adjudications arising from a single course of conduct when single victims are involved, and when the adjudications involved provisions of Minn. Stats. §§ 152.137, 609.585 or 609.251, consideration should be given to only the most severe offense with an adjudication when computing criminal history.~~

~~When there are multiple felony offenses with adjudications arising out of a single course of conduct in which there were multiple victims, consideration should be given only to the two most severe felony offenses with adjudications when computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.~~

~~The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minn. Stats. §§ 152.137, 609.585 and 609.251. The Commission made a deliberate decision not to amend the Sentencing Guidelines. See, *State v. Williams*, 771 N.W.2d 514 (Minn. 2009).~~

5. Convictions from Jurisdictions other than Minnesota.

- a. In General. The state has the burden of proving the facts at sentencing necessary to justify consideration of an out-of-state conviction in the criminal history score, and the court must make the final determination as to whether and how a prior non-Minnesota conviction should be counted in the criminal history score. The court should consider, but is not limited to, the factors in paragraphs b through e, below. Sections 2.B.1 through 2.B.7 govern the use of these convictions.

- b. How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The section in which to count the non-Minnesota offense in criminal history depends on:

- whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; **and**
- the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence of 366 days or more, which includes the equivalent of a stay of imposition. The offense definitions in effect when the current Minnesota offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

- c. Assigning Felony Weights. Section 2.B.1 governs the weight of a prior felony conviction from a jurisdiction other than Minnesota, and must be based on the severity level of the equivalent Minnesota felony offense.
- d. Federal Offenses; No Minnesota Equivalent. Federal felony offenses that received a sentence that in Minnesota would be a felony-level sentence, but for which no comparable Minnesota offense exists, must receive a weight of one in computing the criminal history score.
- e. Juvenile Offenses from other Jurisdictions. Minnesota law governs the inclusion in the criminal history score of a prior felony offense from ~~jurisdictions-a jurisdiction~~ other than Minnesota committed by an offender who was under 18 years old ~~in the juvenile section or adult section of the criminal history score. The offense should be included in the juvenile history section only if it meets the requirements in section 2.B.4.~~ The prior can be included ~~in the adult history section~~ only if the factfinder determines that it is an offense for which the offender would have been certified to adult court if it had occurred in Minnesota.

Comment

2.B.501. The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history score. Convictions from jurisdictions other than Minnesota include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations. The prosecutor is solely responsible to prove the facts at sentencing necessary to justify consideration of out-of-state convictions for inclusion in the criminal history score, Williams v. State, 910 N.W.2d 736, 743 (Minn. 2018) (citation omitted), and the sentencing court is responsible for making the determination of whether and how such convictions are to be included.

2.B.502. ~~The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history score.~~ No uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor" exists. Therefore, the Commission recognizes that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined by current Minnesota offense definitions and sentencing policies, except as provided in section 2.B.7. However, with respect to out-of-state offenses, the Commission chose not to apply Minnesota's 2023 redefinition of "felony," which now defines a felony as including a 365-day sentence. This is consistent with the Commission's policy before 2023 and with Minn. Stat. § 609.0342(b)'s treatment of pre-2023 365-day sentences as gross misdemeanor sentences.

2.B.503. For prior non-Minnesota controlled substance convictions, the amount and type of the controlled substance should be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense.

2.B.504. A non-Minnesota conviction committed by a juvenile can only be included in the adult section of the criminal history score if the offender would have been certified as an adult under Minnesota law. See *State v. Marquetti*, 322 N.W.2d 316 (Minn. 1982).

6. Felony Enhancement Due to Prior Misdemeanor or Gross Misdemeanor Convictions.[Reserved.]

- ~~a. **Enhanced Felonies.** When the current offense is a felony solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, the prior misdemeanor conviction(s) on the targeted misdemeanor list~~

~~provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.~~

~~b. Counting Prior Misdemeanors and Gross Misdemeanors; Future Felony. Except as provide in paragraph c, misdemeanor and gross misdemeanor offenses used to enhance the current offense must be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement must always be used in calculating the offender's criminal history score.~~

~~c. Counting Prior Misdemeanors and Gross Misdemeanors; Felony Driving While Impaired (DWI). If the current offense is a felony DWI offense and the offender has a prior felony DWI offense, the prior felony DWI must be used in computing the criminal history score. The prior misdemeanor and gross misdemeanor offenses used to enhance the first prior felony DWI cannot be used in the offender's criminal history. Any other misdemeanor or gross misdemeanor DWI offenses may be included as provided in section 2.B.3.g.~~

Comment

~~**2.B.601.** A number of instances exist in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior misdemeanor or gross misdemeanor offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases, the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$500 but less than \$1,000 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.~~

~~**2.B.602.** A first-time first-degree (felony) driving while impaired (DWI) offense involves a DWI violation within ten years of the first of three or more prior impaired driving incidents. Because the DWI priors elevated this offense to the felony level, they should be excluded from the criminal~~

~~history score. Those predicate misdemeanor and gross misdemeanor offenses should also be excluded for a subsequent felony DWI, but any prior felony DWI would be counted as part of the felony criminal history score.~~

* * *

C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B above.
 - a. Presumptive Disposition. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence. Section 3.A governs conditions of stayed sentences.
 - b. Presumptive Duration. Each cell on the Grids provides a fixed sentence duration. If a cell, or other Guidelines policy, provides a fixed sentence duration of 12 months, a sentence duration of one year and one day is permissible without departure. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. ~~For cells above the solid line, the~~ The Guidelines provide both a fixed presumptive duration and a range of time for that sentence except as provided in section 2.C.3.c(1). ~~The shaded areas of the grids do not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range—15 percent lower and 20 percent higher than the fixed duration displayed—is permissible without departure, provided that the minimum sentence is not less than one year, and the maximum sentence is not more than the statutory maximum.~~

2.c. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence.

If the presumptive sentence duration in the appropriate cell on the applicable

Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence. See Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table in Appendix 3.

2. Custody Status at the Time of the Offense.

a. Definitions. As used in this section (2.C.2), the following terms have the meanings given:

(1) "Custody status" means a qualifying status that:

- (i) followed entry of guilty plea, guilty verdict, or conviction for a qualifying offense, and
- (ii) was in effect at any time when the person being sentenced committed the current offense.

(2) "Qualifying status" means any of the following:

- (i) probation;
- (ii) parole;
- (iii) supervised release;
- (iv) conditional release following release from an executed prison sentence;
- (v) release pending sentencing;
- (vi) confinement in a jail, workhouse, or prison pending or after sentencing; and
- (vii) escape from confinement following an executed sentence.

(3) "Qualifying offense" means:

- (i) a felony offense assigned a severity level of 3 or greater on the Standard Grid, a felony offense assigned a severity level of D3 or greater on the Drug Offender Grid, or a felony offense on the Sex Offender Grid; or

(ii) a felony offense equivalent, within the meaning of section 2.B.5, to an offense described in clause (i).

(4) "Sex offense" means:

(i) a felony offense on the Sex Offender Grid other than failure to register as a predatory offender, Minn. Stat. § 243.166; or

(ii) a felony offense equivalent, within the meaning of section 2.B.5, to an offense described in clause (i).

b. Durational Increase. If the person being sentenced was, at the time of the current offense, under a custody status for a qualifying offense, then the presumptive duration is increased by the amount shown in the custody status column pertaining to the Grid row for the current offense.

c. Special Durational Increase for Sex Offenses With Sex-Offense Custody Status. Notwithstanding paragraph b, if the current offense is a sex offense and the person being sentenced was, at the time of the current offense, under a custody status for a felony sex offense, then the presumptive duration is increased by double the amount shown in the custody status column of the Sex Offender Grid pertaining to the Grid row for the current offense.

d. Ranges; Statutory Maximum. Any change to the presumptive fixed sentence under paragraph b or c must also be applied to the upper and lower ends of the range found in the appropriate cell on the applicable Grid. Neither the presumptive fixed sentence nor a range may exceed the statutory maximum sentence for the current offense.

e. Exceptions.

(1) This section (2.C.2) does not apply to either of the following forms of custody status:

(i) commitment for treatment or examination under Minn. R. Crim. P. 20;
or

(ii) juvenile custody status other than for an EJJ conviction.

(2) A prior felony conviction that resulted in a non-felony sentence (misdemeanor or gross misdemeanor) is not a qualifying offense or a sex offense within the meaning of this section.

(3) This section does not apply to a presumptive or permissive consecutive sentence pursuant to section 2.F.

* * *

D. Departures from the Guidelines

1. Departures in General. The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition and within the applicable prison range unless there exist identifiable, substantial, and compelling circumstances to support a departure.

The court 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 than the presumptive sentence. A pronounced sentence for a felony conviction that is outside the appropriate prison range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines. A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.

- a. Disposition and Duration. Departures with respect to disposition and duration are separate decisions, each requiring written departure reasons. A court may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa.
- b. Aggravated Departure. When imposing a sentence that is an aggravated departure, it is recommended that the court pronounce a sentence 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 Guidelines.

- c. Departure Report. In exercising the discretion to depart from a presumptive sentence, the court must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence. The reasons must be stated in the sentencing order or recorded in the departure report and filed with the Commission.

- d. Departure Reasons.

(1) Because departures are by definition exceptions to the Guidelines, the departure factors in this section are advisory, except as otherwise established by case law.

(2) Courts have historically limited the applicability of departure factors classified as “offender-related” to dispositional departures. While the sentencing court may find such analysis useful to its identification and articulation of substantial and compelling reasons to support a departure, its decision to depart from the presumptive disposition, duration, or both, should ultimately be based on whether the identified departure factor reasonably and logically supports such a decision.

- e. Revoked Stay of Adjudication. When a felony stay of adjudication is vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentence pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.
- f. Offender’s Demand for Execution. A sentence that is executed pursuant to an offender’s right to demand execution is not an aggravated dispositional departure.

* * *

- 3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

a. Mitigating Factors.

- (1) The victim was an aggressor in the incident.
- (2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.
- (3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.
- (4) The offender's presumptive sentence is a commitment but not a mandatory minimum sentence, and either of the following exist:
 - (a) The current conviction offense is at Severity Level 1 or Severity Level 2 and the offender received all of his or her prior felony sentences during fewer than three separate court appearances; or
 - (b) The current conviction offense is at Severity Level 3 or Severity Level 4 and the offender received all of his or her prior felony sentences during one court appearance.
- (5) Other substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense.
- (6) The court is ordering an alternative placement under Minn. Stat. § 609.1055 for an offender with a serious and persistent mental illness.
- (7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.
- (8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been

accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152.

- (9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4.

(10) The person being sentenced has no prior criminal conviction or stay of adjudication. A criminal history score of zero is not sufficient to qualify for this factor. This factor is not available if the current offense is ranked at severity level 10 or 11 on the Standard Grid or is on the Sex Offender Grid.

* * *

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

* * *

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

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE							<u>Custody Status</u>
	0	1	2	3	4	5	6 or more	
<u>Attempt or conspiracy to commit Murder 1st Degree</u>	180 153-216	190 162-228	200 170-240	210 179-240 ¹	220 187-240 ¹	230 196-240 ¹	240 204-240 ¹	<u>+10</u>

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

* * *

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); Assault 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; Burglary 1st Deg. (assault)</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>Driving While Impaired 1st Degree</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>Assault 2nd Degree; Ineligibly Possess Firearm</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>Burglary 2nd Degree; Simple Robbery</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>Assault 3rd Degree; Felony Domestic Assault</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>Theft of Over \$5,000; 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>Assault 4th Degree; 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.

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

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

* * *

4.B. Sex Offender 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>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 144 ² –172	156 144 ² –187	168 144 ² –201	180 153–216	234 199–280	306 261–360	360 306–360 ³	+18
<i>CSC 2nd Degree, contact by harm/force</i>	B	90 90 ² –108	110 94–132	130 111–156	150 128–180	195 166–234	255 217–306	300 255–360	+15
<i>CSC 3rd Degree, penetration by coercion</i>	C	48 41–57	62 53–74	76 65–91	90 77–108	117 100–140	153 131–183	180 153–216	+9
<i>CSC 3rd Degree, penetration of child 14–15</i>	D	36 31–43	48 41–57	60 51–72	70 60–84	91 78–109	119 102–142	140 119–168	+7
<i>CSC 4th Degree, contact by coercion</i>	E	24 21–28	36 31–43	48 41–57	60 51–72	78 67–93	102 87–120	120 102–120 ³	+6
<i>CSC 4th Degree, contact of child 14–15</i>	F	18 16–21	27 23–32	36 31–43	45 39–54	59 51–70	77 66–92	84 72–100	+4
<i>Possession of Child Sexual Abuse Material</i>	G	15 13–18	20 17–24	25 22–30	30 26–36	39 34–46	51 44–60	60 51–60 ³	+3
<i>CSC 4th Degree, nonconsensual penetration</i>	H	12 12–14	14 12–16	16 14–19	18 16–21	24 21–24 ³	24 ³ 24–24	24 ³ 24–24	+2
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ 12 ¹ –14	14 12 ¹ –16	16 14–19	18 16–21	24 21–28	30 26–36	36 31–43	+2

¹ 12¹=One year and one day mandatory minimum under Minn. Stat. § 243.166, subd. 5(b).



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



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 offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Sex Trafficking is not subject to a 144- or 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (For Severity Level A, Criminal History Scores 0, 1, & 2, the ranges are 123–172, 133–187, & 143–201, respectively. For Severity Level B, Criminal History Score 0, the range is 77–108.)

³ Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2. For Severity Level H, all displayed durations, including the upper and lower ranges, are constrained by the statutory maximum at criminal history scores above 4.

* * *

4.C. Drug Offender Grid

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

SEVERITY LEVEL OF CONVICTION OFFENSE <i>Example offenses listed in italics</i>		CRIMINAL HISTORY SCORE							<u>Custody Status</u>
		0	1	2	3	4	5	6 or more	
<i>Aggravated Controlled Substance Crime 1st Deg.</i>	D9	86 74*-103	98 84*-117	110 94*-132	122 104*-146	134 114*-160	146 125*-175	158 135*-189	<u>+12</u>
<i>Controlled Substance Crime 1st Degree</i>	D8	65 56*-78	75 64*-90	85 73*-102	95 81*-114	105 90*-126	115 98*-138	125 107*-150	<u>+10</u>
<i>Controlled Substance Crime 2nd Degree</i>	D7	48 <u>41-57</u>	58 <u>50-69</u>	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129	<u>+10</u>
<i>Controlled Substance Crime 3rd Degree</i>	D6	21 <u>18-25</u>	27 <u>23-32</u>	33 <u>29-39</u>	39 34-46	45 39-54	51 44-61	57 49-68	<u>+6</u>
<i>Possess Meth Precursors with Intent</i>	D5	18 <u>16-21</u>	23 <u>20-27</u>	28 <u>24-33</u>	33 29-39	38 33-45	43 37-51	48 41-57	<u>+5</u>
<i>Controlled Substance Crime 4th Degree</i>	D4	12 <u>12-14</u>	15 <u>13-18</u>	18 <u>16-21</u>	21 <u>18-25</u>	24 21-28	27 23-32	30 26-36	<u>+3</u>
<i>Meth/Fentanyl Crimes Involving Children</i>	D3	12 <u>12-14</u>	13 <u>12-15</u>	15 <u>13-18</u>	17 <u>15-20</u>	19 17-22	21 18-25	23 20-27	<u>+2</u>
<i>Controlled Substance Crime 5th Degree</i>	D2	12 <u>12-14</u>	12 <u>12-14</u>	13 <u>12-15</u>	15 <u>13-18</u>	17 <u>15-20</u>	19 <u>17-22</u>	21 18-25	<u>+2</u>
<i>Sale of Simulated Controlled Substance</i>	D1	12 <u>12-14</u>	12 <u>12-14</u>	12 <u>12-14</u>	13 <u>12-15</u>	15 <u>13-18</u>	17 <u>15-20</u>	19 17-22	<u>+2</u>

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).



Presumptive commitment to state imprisonment.



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.

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Statute Number	Offense Title	Severity Level
* * *		
609.221 subd. 4	Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)	11**
* * *		
609.2231 subd. 4 (b)	Assault 4th Degree Motivated by Bias	1**
* * *		
609.322 subd. 1(a)	Sex Trafficking 1st Degree	B*
* * *		
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	Criminal Sexual Conduct 2nd Degree	B*
609.343 subd. 1a(e)(f)(g)	Criminal Sexual Conduct 2nd Degree	D
609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C*
* * *		
609.4751, subd. 3	Impersonating a Peace Officer	2*
* * *		
609.485 subd. 4(a)(4)	Escape from Civil Commitment	1*
* * *		
609.595 subd. 1a(a)	Damage to Property (Motivated by Bias)	1*
609.596 subd. 1	Killing or Harming a Public Safety Dog	Unranked
609.597 subd. 3(3)	Assaulting or Harming a Police Horse	1*

** See section [2-C.22.C.1.c](#) and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

* See section [2-C.22.C.1.c](#) and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

Statute Number	Offense Title	Severity Level
* * *		
609.662 subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1*
* * *		
609.713 subd. 3(a)	Threats of Violence (Replica Firearm)	1*
* * *		
609.746 subd. 1(h)	Surreptitious Observation Device (Minor Victim and Sexual Intent)	G*
* * *		
609.776	Interference with Emergency Communications	5*
* * *		
609.78 subd. 2c	Fictitious Emergency Call (Response to Home of Official)	1*
* * *		
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance or Child Sexual Abuse Material (Subsequent, by Predatory Offender, or Child Under 14)	C*
617.247 subd. 3(a)	Dissemination of Child Sexual Abuse Material	E
617.247 subd. 3(b)	Dissemination of Child Sexual Abuse Material (Subsequent, by Predatory Offender, or Child Under 14)	C*
* * *		
624.7141 subd. 1	Transferring Firearm to Ineligible Person	2*
* * *		

* * *

* See section [2-C.22.C.1.c](#) and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

8. Severe Violent Offense List

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

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section ~~2.C.22.C.1.c~~. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *



MEMORANDUM

To: Minnesota Sentencing Guidelines Commission
From: Kelly Lyn Mitchell, Chair
Hon. Michelle Larkin, Vice-Chair
Date: December 12, 2024
Subject: **Comprehensive Review Schedule**

In October, the Sentencing Guidelines Commission used stakeholder feedback and research results to identify the major components of the comprehensive review. Specifically, the Commission determined that the comprehensive review should include proposals that address offense severity rankings, the criminal history score, and high departure rates. The Commission also determined that any proposals should aim to simplify the Guidelines to the greatest extent possible.

Subsequently, in December, Minnesota received a budget forecast indicating there may be structural imbalances requiring long-term adjustments in state spending. As a result, although the Commission has requested additional funds to continue to support the comprehensive review, the Commission may need to complete this work using existing resources.

Given both the clarity the Commission now has regarding the review, and the fiscal outlook, the Chair and Vice-Chair believe it is prudent to develop a plan to complete the comprehensive review by the end of 2025. This memo provides the broad outline for that plan.

Approach:

The Commission will proceed on three tracks simultaneously:

- Track 1: A comprehensive review steering committee will provide guidance to staff on developing a ranking exercise and develop a criminal history proposal.
 - Steering Committee: Chair Mitchell, Vice-Chair Larkin, Commissioners Knutson, Ladd, Middlebrook, Reeves.
- Track 2: UMN Research Team and MSGC Research Staff will complete additional research to assist in proposal development.
- Track 3: The Commission will work on select topics while larger proposals are in development.

Additional subcommittees may be formed as needed.



MINNESOTA

SENTENCING GUIDELINES COMMISSION

Timeline:

Track	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Track 1: Steering Committee	Provide guidance to staff on ranking exercise											
	Develop a wholistic criminal history proposal											
Track 2: Research (U of M and MSGC Staff)	Out of State offenses					Staff develops impact analyses based on proposals						
	Hernandizing											
	High departure rates					U of M and staff researchers perform additional research as needed						
Track 3: Comm’n	Final report to legislature	Purposes and principles	Ranking Exercise (Mar or Apr)			Review and rank any new offenses from legislative session	Public Hearing	Receive and vet proposals	Continue to work through and refine proposals	Continue to work through and refine proposals	Review and vote on final proposals to send to public hearing	Public Hearing
			Additional discrete topics				Confirm Rankings					
Mtg Times	3-4:30 p.m.					1-3:30 p.m.		10 a.m. – 4 p.m.	1-4:00 p.m. or 10 a.m.-4 p.m.		1-3:30 p.m.	

The Commission will hold shorter meetings while the policy proposals are in development. This will allow the advisory subcommittee to use that time to work on proposal development. The advisory subcommittee will provide a progress update during regular Commission meetings.

Research flow:

- Out of state offenses – research results will inform the criminal history score proposal and then go to the Commission.
- Hernandizing – research results inform the criminal history score proposal and then go to Commission.
- High departure rates – research results could inform the rankings exercise if reranking is an option or move directly to the full Commission if a legislative solution is needed.

Comprehensive Review Topics (2025)

Goal of Comprehensive Review

In October 2024, the Sentencing Guidelines Commission used stakeholder feedback and research results to identify the major components of the comprehensive review. Specifically, the Commission determined that the comprehensive review should include proposals that address offense severity rankings, the criminal history score, and high departure rates. The Commission also determined that any proposals should aim to simplify the Guidelines to the greatest extent possible.

Progress

White = not included in draft package

Light blue = included in draft package

Light orange = still in discussion; will determine if moving forward at Steering Committee meeting

Proposal	Included in Draft Package?
Offense Severity Rankings	
Felony Motor Vehicle Ranking (includes DWI, criminal vehicular homicide, etc.)	Yes
Assaults, Protective Orders, Aggravated Robbery	Yes
Status Crimes (Felon with a Gun, Failure to Register)	Yes
Drug Offenses	Delayed to 2026
Motor Vehicle Theft	Delayed to 2026
Offenses Resulting in Death	Delayed to 2026
Criminal History	
Reshape criminal history categories (add true zero column, add 7 column)	No. Discussed extensively, but no consensus Proposed adding a departure reason for first-time offenders instead
Remove juvenile points from criminal history score	Yes
Remove custody status from the criminal history score	Steering Committee did not reach consensus on removing custody status altogether; proposal to move it out of the score and create a new column on the grid adding an additional penalty is included in the package
Eliminate (or cap) Hernandizing	No. Discussed but no consensus
Simplify county for misdemeanors/gross misdemeanors used to enhance felonies	Yes
Eliminate felony upweighting	No. Discussed but consensus was not to pursue this idea

Proposal	Included in Draft Package?
Simplify counting for out-of-state offenses	Mixed; steering Committee reached consensus on retaining the current rule but shifting the burden from probation officers to prosecutors
Add a departure reason for criminal history overstating or understating the person's record	No
Reduce decay time to 10 years for felonies, 7 years for misdemeanors/gross misdemeanors	Yes
Establish a rule regarding stays of imposition and stays of execution	No. Discussed but no consensus
High Departure Rates	
Focus offense severity rankings review on offenses with the highest departure rates	Yes
Consider adding border boxes to the standard and drug grids	No. Not much discussion
Allow mitigated durations departures for offender-based factors	Yes
Additional Items	
Add ranges to shaded cells on the grid	Yes
Revise the description for offenses at severity level 4 on the main grid	Yes
Change the numbering system for the guidelines to make them easier to navigate	Delay to 2026
Review Purposes and Principles section	In progress at full Commission