

MINNESOTA

SENTENCING GUIDELINES

COMMISSION

Steering Committee Report

Presentend to Sentencing Guidelines Commission

August 13, 2025

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Steering Committee Members

- Kelly Lyn Mitchell, Chair, DOC Representative
- Hon. Michelle Larkin, Vice-Chair, Court of Appeals Representative
- Hon. David Knutson, District Court Representative
- Kyra Ladd, Prosecutor Representative
- Cathryn Middlebrook, Public Defender Representative
- LaTonya Reeves, Probation Representative

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## Goals of Steering Committee Recommendations

- Propose a *package* of proposals; avoid getting too bogged down in any one proposal, because each policy has tentacles that leads to other considerations.
  - If we can agree on a package of proposals, we should be able to address multiple considerations at once.
- Bring forward consensus item.
  - A package for which the Steering Committee can reach consensus is more likely to reach consensus at the full Commission level.

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## Criminal History Proposals

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Relative Influence of Criminal History

Guidelines commentary states that criminal history is secondary to offense severity. Therefore, the portion of the sentence attributable to the criminal history score should not be greater than the portion of the sentence attributable to its severity.

**2.B.01.** The Guidelines reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary factor in dispositional decisions.

Under the Guidelines, the conviction offense is the primary factor, and criminal history is a secondary factor in dispositional decisions. Prior to enactment of the Guidelines, there were no uniform standards regarding what should be included in an offender’s criminal history, no weighting format for different types of offenses, and no systematic process to check the accuracy of the information on criminal history.

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My Articulation of the Purpose of Criminal History

The purpose of criminal history in the guidelines is to address *both* risk of reoffending and blameworthiness.

- Risk of reoffending → A person with a higher criminal history score is more likely to recidivate.
- Blameworthiness → A person has been previously convicted but hasn’t yet corrected their behavior.
- Goal is to tie sentencing policy to concepts that are most likely to reduce recidivism and that are meaningful responses to individuals who have not corrected their behavior after experience with the system.

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Current Criminal History Score

Prior Felonies

Prior Misdemeanors and Gross Misdemeanors

Prior Juvenile Offenses ←

Custody Status ←

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Eliminate Juvenile Points

Proposed Policy (p. 6,13)

- Eliminate juvenile points from the criminal history score.
- Continue to count convictions resulting from Extended Jurisdiction Juvenile (EJJ) or adult-certification proceedings among the adult felony points.

Rationale

- Few individuals meet the qualifications for juvenile points.
- Research indicates this component is not significantly predictive of future offending, but its removal will reduce sentencing disparity.

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Staff Presentation

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## Convert Custody Status to a Durational Increase

### Proposed Policy (p. 6-12, 23-25, 28-31)

- Remove custody-status criminal history score.
- Replace it with a custody-status durational increase.

### Rationale

- Custody status is not a criminal history element and should not be counted in that way.
- Resolves the rounding issue with our current custody status half point.
- Balances interests by retaining the policy of imposing a consequence for committing a new offense while serving the current one but ensuring that a person does not cross the dispositional line as a result of custody status alone.

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### 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 <sup>1</sup>	426 363-480 <sup>1</sup>	+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 <sup>1,2</sup>	+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

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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.

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Reduce Decay Periods

Proposed Policy (p. 6,13)

- Change the felony decay period from 15 to 10 years
- Change the misdemeanor decay period from 10 to 7 years

Rationale

- 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.
- Research suggests that after 7 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.

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Simplify counting for enhanceable offenses

Proposed Policy (p. 14, 21)

- Retain the rule stating that when an offense is a felony because it is an enhanceable offense, do not count the prior misdemeanors and gross misdemeanors that resulted in enhancement.
- Eliminate two other special rules about counting misdemeanor and gross misdemeanor DWI and CVH/O

Rationale

- Removes two incredibly complex and confusing rules from the guidelines in favor of one simple rule that treats all enhanceable offenses the same way
- Addresses inequity in the way enhanceable assault and domestic assault offenses were counted in comparison to DWI’s

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Simplify counting for enhanceable offenses

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.

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Clarify Burden for Proving Out-of-State Criminal History

Proposed Policy (p. 18)

- Update guidelines to clarify that the prosecutor has the burden to bring the necessary information forward to prove out-of-state criminal history that should be applied in a particular case.
- Provide training on what it means to shift this burden from the probation officer to the prosecutor.

Rationale

- Out-of-state criminal history rule requires matching both the sentence and elements of the crime to use a conviction from another state.
- Because of the complexity, this analysis should be done by a lawyer, not a probation officer.
- Case law makes it clear that the burden lies with the prosecutor.

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Clarify Burden for Proving Out-of-State Criminal History

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.

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The logo for the Minnesota Sentencing Guidelines Commission, featuring a stylized 'm' and 'n' in blue and green, followed by the text 'MINNESOTA SENTENCING GUIDELINES COMMISSION' in blue.

Other Proposed Changes

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Clarify Commission Intent for Departures Grounds

Proposed Policy (p. 26)

- Remove the limitation of using offense characteristics for durational departures and characteristics related to the individual for dispositional departures.
- Clarify that departure grounds can be used if they logically apply.

- The distinction between departure types was created by the MN Supreme Court. At the time, there was no legal basis for making this distinction, but it has perpetuated because it is now precedent.
- After 40+ years of experience in using the guidelines, there are times when these distinctions unnecessarily limit court discretion.
- Removing these limitations would allow for durational departures based on characteristics related to the individual being sentenced.

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Clarify Commission Intent for Departures Grounds

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.

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### Add New Mitigated Departure Factor

Proposed Policy (p. 28)	Rationale
<ul style="list-style-type: none"><li>• Add new factor allowing a mitigated departure if the person has no prior convictions or stays of adjudication.</li><li>• A person with a criminal history score of 0, but who <i>does</i> have prior convictions that did not add up to a full point is not eligible for this type of departure.</li><li>• A person whose current offense is at SL 10 or 11 on Standard Grid, or any SL on the Sex Offense Grid is also not eligible.</li></ul>	<ul style="list-style-type: none"><li>• Research indicates 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.</li></ul>

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### Add New Mitigated Departure Factor

(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.

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Items for Next Year

- Review rankings for:
  - Drug Offenses
  - Motor Vehicle Theft
  - Offenses Resulting in Death
- Reorganize, renumber, and simplify the structure for the guidelines
- Revisit Hernandizing

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