

**Notes to Commissioner Schellhas's Proposed Concept for Controlled-Substance  
Grids**

1. Fourth- and fifth-degree crimes have not been added to attached grids. References to marijuana plants and dosage units have not yet been incorporated.
2. Drugs other than heroin, cocaine and methamphetamine, and marijuana will be contained on a separate grid not yet prepared.
3. Crimes for which probation is currently the presumptive sentence will remain unchanged. With respect to other crimes for which probation is permitted in the attached grids, before giving a defendant a probationary sentence, a court must find that the defendant is chemically defendant and is amenable to participate in chemical-dependency treatment.
4. Aggravating factors will be defined as in H.F. NO. 2107. (Attached)
5. If the legislature does not repeal mandatory minimum sentences for controlled-substance crimes, the mandatory minimum sentences will apply or the guidelines sentence, whichever is longer.
6. All noted presumptive prison sentences constitute the middle of the box and will have ranges added to the attached grids.

#### 4.C.1. Controlled-Substance Grid for Sale of Heroin

	0	1	2	3	4	5	6+
<b><u>First Degree</u></b>							
50g or > within 90 days +1 agg. factor	146	166	176	186	196	216	236
20-49g within 90 days days + 1 agg. factor	126	146	156	166	176	186	196
10-19g within 90 days +1 agg. factor	106	116	126	136	146	156	166
50g or > within 90 days	126	136	146	156	166	176	186
20-49g within 90 days	106	116	126	136	146	156	166
10-19g within 90 days	86	96	106	116	126	136	146
<b><u>Second Degree</u></b>							
3-9g within 90 days + 1 agg. factor	68	78	88	98	108	118	128
3-9g within 90 days	48	58	68	78	88	98	108
<b><u>Third Degree</u></b>							
Up to 2g within 90 days +1 agg. factor	Up to 48	Up to 58	58	68	78	88	98
Up to 2g within 90 days	Up to 21	Up to 27	Up to 33	33	45	51	57

#### 4.C.2. Controlled-Substance Grid for Possession of Heroin

	0	1	2	3	4	5	6+
<b><u>First Degree</u></b>							
50g or > within 90 days +1 agg. factor	146	166	176	186	196	216	236
36-49g within 90 days days + 1 agg. factor	126	146	156	166	176	186	196
25-35g within 90 days +1 agg. factor	106	116	126	136	146	156	166
50g or > within 90 days	126	136	146	156	166	176	186
36-49g within 90 days	106	116	126	136	146	156	166
25-35g within 90 days	86	96	106	116	126	136	146
<b><u>Second Degree</u></b>							
6-24g within 90 days + 1 agg. factor	68	78	88	98	108	118	128
6-24g within 90 days	48	58	68	78	88	98	108
<b><u>Third Degree</u></b>							
3-5g within 90 days +1 agg. factor	Up to 48	Up to 58	Up to 68	68	78	88	98
3-5g within 90 days	Up to 21	Up to 27	Up to 33	33	45	51	57

#### 4.D.1. Controlled-Substance Grid for Sale of Cocaine and Methamphetamine

	0	1	2	3	4	5	6 or >
<b>First Degree</b>							
<b>100g or &gt; within 90 days + 1 agg. factor</b>	145	155	165	175	185	195	205
<b>75-99g within 90 days + 1 agg. factor</b>	125	135	145	155	165	175	185
<b>50-74g within 90 days + 1 agg. factor</b>	115	125	135	145	155	156	166
<b>25-49g within 90 days + 1 agg. factor</b>	105	115	125	135	145	155	165
<b>10-24g within 90 days + 1 agg. factor</b>	95	105	115	125	135	145	155
<b>100g or &gt; within 90 days</b>	115	125	135	145	155	165	175
<b>75-99g within 90 days</b>	105	115	125	135	145	155	165
<b>50-74g within 90 days</b>	Up to 95	Up to 105	Up to 115	115	125	135	145
<b>25-49g within 90 days</b>	Up to 90	Up to 100	Up to 110	Up to 120	120	130	140
<b>10-24g within 90 days</b>	Up to 86	Up to 96	Up to 106	Up to 116	Up to 126	126	136

#### 4.D.1. Controlled-Substance Grid for Sale of Cocaine and Methamphetamine

##### Second-Degree

3-9g within  
90 days + 1  
agg. factor

Up	Up	Up	Up			
to	to	to	to	116	126	136
86	96	106	116			

3-9g within  
90 days

Up	Up	Up	Up	Up		
to	to	to	to	to	88	98
48	58	68	78	88		

##### Third Degree

Any amount  
within 90  
days + 1  
agg. factor

Up						
to						
48	58	68	78	88	98	108

Any amount  
within 90  
days

Up						
to						
21	27	33	46	45	51	57

#### 4.D.2. Controlled-Substance Grid for Possession of Cocaine and Methamphetamine

	0	1	2	3	4	5	6 or >
<b>First Degree</b>							
<b>100g or &gt; within 90 days + 1 agg. factor</b>	145	155	165	175	185	195	205
<b>75-99g within 90 days + 1 agg. factor</b>	125	135	145	155	165	175	185
<b>50-74g within 90 days + 1 agg. factor</b>	115	125	135	145	155	156	166
<b>36-49g within 90 days + 1 agg. factor</b>	105	115	125	135	145	155	165
<b>25-35g within 90 days + 1 agg. factor</b>	95	105	115	125	135	145	155
<b>100g or &gt; within 90 days</b>	115	125	135	145	155	165	175
<b>75-99g within 90 days</b>	105	115	125	135	145	155	165
<b>50-74g within 90 days</b>	Up to 95	Up to 105	Up to 115	115	125	135	145
<b>36-49g within 90 days</b>	Up to 90	Up to 100	Up to 110	Up to 120	120	130	140
<b>25-35g within 90 days</b>	Up to 86	Up to 96	Up to 106	Up to 116	Up to 126	126	136

#### 4.D.2. Controlled-Substance Grid for Possession of Cocaine and Methamphetamine

##### Second-Degree

6-24g within 90 days + 1 agg. factor	Up	Up	Up	Up	116	126	136
	to	to	to	to			
	86	96	106	116			

6-24g within 90 days	Up	Up	Up	Up	Up	88	98
	to	to	to	to	to		
	48	58	68	78	88		

##### Third Degree

Any amount within 90 days + 1 agg. factor	Up						
	to						
	48	58	68	78	88	98	108

Any amount within 90 days	Up						
	to						
	21	27	33	46	45	51	57

#### 4.E.1. Controlled-Substance Grid for Sale of Marijuana

	0	1	2	3	4	5	6 or >
<b>First Degree</b>							
100kg or > within 90 days + 1 agg. factor	136	146	156	166	176	186	196
75-99kg within 90 days + 1 agg. factor	126	136	146	156	166	176	186
51-74kg within 90 days + 1 agg. factor	116	126	136	146	156	166	176
100kg or > within 90 days	106	116	126	136	146	156	166
75-99kg within 90 days	96	106	116	126	136	146	156
50-74kg within 90 days	Up to 86	Up to 96	Up to 106	Up to 116	Up to 126	Up to 136	Up to 146
<b>Second Degree</b>							
25-49kg within 90 days + 1 agg. factor	Up to 67	Up to 77	Up to 87	Up to 97	97	107	117
25-49kg within 90 days	Up to 57	Up to 69	Up to 81	Up to 93	Up to 105	Up to 117	Up to 129
<b>Third Degree</b>							
10-24kg within 90 days + 1 agg. factor	Up to 48	Up to 58	Up to 68	Up to 78	88	98	108
10-24kg within 90 days	Up to 21	Up to 27	Up to 33	Up to 46	Up to 54	Up to 61	Up to 68

#### 4.E.2. Controlled-Substance Grid for Possession of Marijuana

	0	1	2	3	4	5	6 or >
<b><u>First Degree</u></b>							
100kg or > within 90 days days + 1 agg. factor	136	146	156	166	176	186	196
75-99kg within 90 days +1 agg. factor	126	136	146	156	166	176	186
51-74kg within 90 days + 1 agg. factor	116	126	136	146	156	166	176
100kg or > within 90 days	106	116	126	136	146	156	166
75-99kg within 90 days	96	106	116	126	136	146	156
50-74kg within 90 days	Up to 86	Up to 96	Up to 106	Up to 116	Up to 126	Up to 136	Up to 146
<b><u>Second Degree</u></b>							
25-49kg within 90 days + 1 agg. factor	Up to 67	Up to 77	Up to 87	Up to 97	97	107	117
25-49kg within 90 days	Up to 57	Up to 69	Up to 81	Up to 93	Up to 105	Up to 117	Up to 129
<b><u>Third Degree</u></b>							
10-24kg within 90 days + 1 agg. factor	Up to 48	Up to 58	Up to 68	Up to 78	88	98	108
10-24kg within 90 days	Up to 21	Up to 27	Up to 33	Up to 46	Up to 54	Up to 61	Up to 68

b. Aggravating Factors.

- (1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, and the offender knew or should have known of this vulnerability.
- (2) The victim was treated with particular cruelty for which the individual offender should be held responsible.
- (3) The current conviction is for a criminal sexual conduct offense, or an offense in which the victim was otherwise injured, and is the offender has a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.
- (4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:
  - (a) the offense involved multiple victims or multiple incidents per victim;
  - (b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;
  - (c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
  - (d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or
  - (e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

(5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

- (a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so;
- (b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
- (c) the offense involved the manufacture of controlled substances for use by other parties;
- (d) the offender knowingly possessed a firearm during the commission of the offense;
- (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
- (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
- (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional).

(6) The offender committed, for hire, a crime against the person.

(7) The offender is being sentenced as an "engrained offender" under Minn. Stat. § 609.3455, subd. 3a.

(8) The offender is being sentenced as a "dangerous offender who commits a third violent crime" under Minn. Stat. § 609.1095, subd. 2.

(9) The offender is being sentenced as a "career offender" under Minn. Stat. § 609.1095, subd. 4.

#### 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 (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	<b>11</b>	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480<sup>2</sup></i>	426 <i>363-480<sup>2</sup></i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>10</b>	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	<b>9</b>	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	<b>8</b>	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	<b>7</b>	36 <i>30-42</i>	42 <i>36-48</i>	48 <i>42-54</i>	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84<sup>2,3</sup></i>
<i>Controlled Substance Crime, 3rd Degree</i>	<b>6</b>	21 <i>18-24</i>	27 <i>24-30</i>	33 <i>30-36</i>	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>5</b>	18 <i>15-21</i>	23 <i>20-26</i>	28 <i>24-32</i>	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	<b>4</b>	12 <sup>1</sup> <i>10-14</i>	15 <i>12-18</i>	18 <i>15-21</i>	21 <i>18-24</i>	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	<b>3</b>	12 <sup>1</sup> <i>10-14</i>	13 <i>11-15</i>	15 <i>13-17</i>	17 <i>15-19</i>	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	<b>2</b>	12 <sup>1</sup> <i>10-14</i>	12 <sup>1</sup> <i>10-14</i>	13 <i>11-15</i>	15 <i>13-17</i>	17 <i>15-19</i>	19 <i>17-21</i>	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>1</b>	12 <sup>1</sup> <i>10-14</i>	12 <sup>1</sup> <i>10-14</i>	12 <sup>1</sup> <i>10-14</i>	13 <i>11-15</i>	15 <i>13-17</i>	17 <i>15-19</i>	19 <i>17-22</i>

<sup>1</sup> 12<sup>1</sup>=One year and one day



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 one year 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.

<sup>2</sup> 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 one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

<sup>3</sup> The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; 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.

#### CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or More
<i>CSC 1<sup>st</sup> Degree</i>	<b>A</b>	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360<sup>2</sup></i>
<i>CSC 2<sup>nd</sup> Degree—(c)(d)(e)(f)(h) Prostitution; Sex Trafficking<sup>3</sup> 1<sup>st</sup> Degree—1(a)</i>	<b>B</b>	90 <i>90<sup>3</sup>-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300<sup>2</sup></i>
<i>CSC 3<sup>rd</sup> Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking 2<sup>nd</sup> Degree—1a</i>	<b>C</b>	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180<sup>2</sup></i>
<i>CSC 2<sup>nd</sup> Degree—(a)(b)(g) CSC 3<sup>rd</sup> Degree—(a)(e)(f) or(b)with ref. to subd. 2(1) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	<b>D</b>	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4<sup>th</sup> Degree—(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography<sup>2</sup></i>	<b>E</b>	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120<sup>2</sup></i>
<i>CSC 4<sup>th</sup> Degree—(a)(b)(e)(f); CSC 5<sup>th</sup> Degree; Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	<b>F</b>	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3<sup>rd</sup> Degree—(b) with subd. 2(2); Indecent Exposure Possession of Child Pornography; Solicit Child for Sexual Conduct<sup>2</sup></i>	<b>G</b>	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60<sup>2</sup></i>
<i>Registration Of Predatory Offenders</i>	<b>H</b>	12 <sup>1</sup> <i>12<sup>1</sup>-14</i>	14 <i>12<sup>1</sup>-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

<sup>1</sup> 12<sup>1</sup>=One year and one day.



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 one year 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.

<sup>2</sup> 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 one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

<sup>3</sup> Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)

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**152.152. Stayed sentence limited**

Minnesota Statutes Annotated Health (Ch. 144-159) (Approx. 2 pages)

Minnesota Statutes Annotated

Health (Ch. 144-159)

Chapter 152. Drugs; Controlled Substances

Stay; Dismissal; Expungement; Other Law

M.S.A. § 152.152

**152.152. Stayed sentence limited**

Currentness

If a person is convicted under section 152.021, 152.022, 152.023, or 152.0262, and the Sentencing Guidelines grid calls for a presumptive prison sentence for the offense, the court may stay imposition or execution of the sentence only as provided in this section. The sentence may be stayed based on amenability to probation only if the offender presents adequate evidence to the court that the offender has been accepted by, and can respond to, a treatment program that has been approved by the commissioner of human services. The court may impose a sentence that is a mitigated dispositional departure on any other ground only if the court includes as a condition of probation incarceration in a local jail or workhouse.

**Credits**

Laws 1989, c. 290, art. 3, § 20, eff. Aug. 1, 1989. Amended by Laws 2005, c. 136, art. 7, § 21.

**Notes of Decisions (1)**

M. S. A. § 152.152, MN ST § 152.152

Current with legislation through the end of the 2015 First Special Session.

**End of Document**

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