



MINNESOTA

SENTENCING GUIDELINES COMMISSION

April Lunch & Learn: Open Q & A on out-of-state offenses



Presented by MSGC Staff



Using Out-of-State Criminal History – 2.B.5

- The policy in 2.B.5 states that “the court must make the *final* decision as to whether and how a prior non-MN conviction should be counted in criminal history.
- The court “should consider, but is not limited to, the factors in...sections **2.B.1 through 2.B.7**” which are the criminal history policies.
- Unless it is clear what constitutes an offense in MN, like with drug offense, an offenses like felony DWI that requires a certain number of priors, or a monetary “threshold offense,” non-MN priors should not be included in criminal history until the court has determined the appropriate designation. And even in seemingly obvious situations, the court should be informed about making the final decision.
- If the prior juvenile non-MN offense was not adjudicated delinquent in juvenile court, along with meeting the other requirements in 2.B.4 for inclusion, the district court will need to determine if that non-MN offense is one that would have been certified here in MN. (*State v. Marquetti*, 322 N.W.2d 316 (Minn. 1982))
- If the non-MN offense is a federal offense with no MN equivalent, it will be included as 1 point.

So, what does all this mean all parties?

State v. Maley (714 N.W.2d 708 (2006)): Brian Lee Maley appeals his 54-month prison sentence imposed after he pleaded guilty to a controlled-substance violation. Maley argues that the district court erroneously considered two out-of-state convictions in calculating his criminal-history score.

OPINION: Because the state's burden to establish a sufficient factual basis for the challenged convictions was neither met nor excused, we reverse and remand for resentencing.

- “The state must establish by a fair preponderance of the evidence that the prior conviction was valid, the defendant was the person involved, and the crime would constitute a felony in Minnesota.” *State v. Gant, 2023*
- “In contrast, the state did not meet its burden in Maley when it listed the out-of-state convictions on the sentencing worksheet but provided no documents or evidence admissible under rule 1005 to prove the convictions.” *State v. Keltner, 2022*
- “At sentencing, the state bears the burden of proving by a fair preponderance of the evidence, that a prior conviction qualifies for inclusion in a defendant's criminal-history score.” *State v. Abdullahi, 2023*
- “In accordance with Griffin and rule 1005, the district court can "rely on persuasive evidence that sufficiently substitutes for the official, certified record of conviction.” *State v. Keltner, 2022*
- “To justify a district court’s inclusion of out-of-state convictions in the defendant’s criminal history score, THE STATE does not satisfy its burden of establishing the validity of the convictions and that the defendant was the person involved in relying solely on a PSI that does not meet the standard set for in Minnesota Rules of Evidence 1005. In this case, the state failed to meet its burden as to all three Illinois convictions and the district court abused its discretion by relying on the PSI alone to calculate Johnson’s criminal-history score based on those convictions. Accordingly, we reverse and remand to allow the state to further develop the sentencing record so that the district court can make a proper determination.” *State v. Johnson, 2026*

Bail Jumping - WI

In Wisconsin, you can be charged with bail jumping (Wis. Stat. § 946.49) if you intentionally violate any condition of your bond while released from custody for a pending felony or misdemeanor. This includes missing court dates, committing new crimes, or breaking rules like consuming alcohol or contacting specific individuals.

Key Requirements to Trigger a Bail Jumping Charge:

- **Active Bond:** You must be released on a bond (signature or cash) after being charged with a misdemeanor or felony.
- **Intentional Violation:** You intentionally fail to comply with the specific terms set by the court.

Common Ways to Violate Bail in Wisconsin:

- **Missing Court Dates:** Failing to appear for any scheduled court appearance.
- **Violating "Absolute Sobriety":** Consuming drugs or alcohol when ordered not to.
- **Violating "No Contact" Orders:** Contacting victims or specific individuals mentioned in your bond conditions.
- **Committing New Crimes:** Getting arrested for any new misdemeanor or local ordinance violation while on bond.
- **Ignoring Administrative Rules:** Violating restrictions such as travel limitations, curfew, or failing to report to a bail monitor.

Bail Jumping - ND

In North Dakota, you get a bail jumping charge (often termed "Failure to Appear") by intentionally failing to appear in court as required after being released on bail or recognizance for a pending criminal case. The charge applies if you knowingly miss a scheduled hearing, with penalties escalating based on the severity of the original charge.

Key Aspects of Bail Jumping in ND:

- **Intentional Failure:** You must have known about the court date and intentionally missed it.
- **Violation of Conditions:** Violating specific, court-ordered bail conditions (e.g., sobriety, travel restrictions) can also constitute bail jumping.
- **Severity Levels:** If the original charge you were released on was a felony, bail jumping is a felony. If it was a misdemeanor, it is a misdemeanor.
- **Penalties:** This can result in a new, separate criminal charge, additional fines, up to five years in prison, and immediate forfeiture of bond money.

This has been a training presentation by the staff of the Minnesota Sentencing Guidelines Commission. Opinions expressed are not necessarily those of the Commission itself, and information presented is not necessarily authoritative.

Please refer to the Commission's web site for the actual policies to the Sentencing Guidelines discussed in this presentation.

<https://mn.gov/sentencing-guidelines/guidelines/>

For assistance, please e-mail sentencing.guidelines@state.mn.us