



Minnesota Sentencing Guidelines Commission

Adopted Modifications to the Sentencing Guidelines

I. Adopted Modifications to Rank the Severity of New or Amended Crimes Passed by the Legislature during the 2002 Session – Effective January 1, 2003

A. The Commission adopted a proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Severity Level VIII

Criminal Sexual Conduct 3 – 609.344, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), & (m) & (n)

Severity Level VI

Criminal Sexual Conduct 4 – 609.345, subd. 1(c), (d), (g), (h), (i), (j), (k), (l), & (m) & (n)

Severity Level V

Harassment/Stalking (third or subsequent violations) – 609.749, subd. 4(b)

Severity Level IV

Harassment/Stalking (second or subsequent violations) – 609.749, subd. 4(a)

Harassment/Stalking (aggravated violations) – 609.749, subd. 3(a),(b)

B. The Commission adopted a proposal to add the following crimes to the Unranked Offense List in *Section II.A.03 of the Commentary*:

Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines – 609.594

Real and Simulated Weapons of Mass Destruction – 609.712

Insurance Fraud-Employment of Runners – 609.612

C. The Commission adopted a proposal to continue the existing severity level ranking for the following crimes and the existing policies regarding Attempted Murder in the First Degree:

Attempted Murder in the First Degree; Child Endangerment

II. Other Adopted Modifications Related to New and Amended Crimes Passed by the Legislature during the 2002 Session – Effective January 1, 2003

A. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address legislative amendments to *Minnesota Statute § 609.343 subd. 2* creating a presumptive sentence of at least 90 months for Criminal Sexual Conduct in the Second Degree 609.343 subd. 1 (c), (d), (e), (f), and (h).

C. Presumptive Sentence: ...

Pursuant to M.S. § 609.343, subdivision 2, the presumptive sentence for a conviction of Criminal Sexual Conduct in the Second Degree, 609.343 subd. 1 clauses (c), (d), (e), (f), and (h), is an executed sentence of at least 90 months. Sentencing a person in a manner other than that described in M.S. § 609.343, subdivision 2 is a departure. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

II.C.09. When an offender has been convicted of M.S. § 609.343 subd. 1 clauses (c), (d), (e), (f), or (h), the presumptive duration is that found in the appropriate cell of the Sentencing Guidelines Grid, any applicable mandatory minimum sentence, or the minimum presumptive sentence pursuant to M.S. § 609.343, subdivision 2, whichever is longer. According to M.S. § 609.343, subd. 2, the presumptive sentence for a conviction of these clauses of Criminal Sexual Conduct in the Second Degree is an executed sentence of at least 90 months. The presumptive duration for an attempt or conspiracy to commit Criminal Sexual Conduct in the Second Degree is one-half of the time listed in the appropriate cell of the Sentencing Guidelines Grid, or any mandatory minimum, whichever is longer.

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

For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. § 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. § 609.343 Subd. 1 (c), (d), (e), (f), and (h)), the presumptive duration is one-half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer.

V. OFFENSE SEVERITY REFERENCE TABLE

VIII	<u>Criminal Sexual Conduct 2 - 609.343 Subd. 1 (c), (d), (e), (f), and (h) (See II.C. Presumptive Sentence and II. G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.)</u>
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NUMERICAL REFERENCE OF FELONY STATUTES

609.343 subd.1(c)(d)(e)(f)(h)

Criminal Sexual Conduct 2

* See II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.

IV. SENTENCING GUIDELINES GRID

<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct,</i> <i>2nd Degree (c), (d), (e), (f), & (h)²</i>	VIII	48 44-52	58 54-62	68 64-72	78 74-82	88 84-92	98 94-102	108 104-112
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2 Pursuant to M.S. § 609.342, subd. 2 and 609.343 subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree - clauses c,d,e,f, and h is a minimum of 90 months (see II.C. Presumptive Sentence and II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers).

B. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address a new sentencing enhancement for Crimes Committed in Furtherance of Terrorism – 609.714

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

For persons sentenced under Minn. Stat. § 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased 50%. The presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime.

C. The Commission adopted a proposal to add the following language to the Sentencing Guidelines and Commentary to address the new provision in Aiding an Offender – Taking Responsibility for Criminal Acts– 609.495 subd. 4

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), or Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender-Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495 subd. 4, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed or intended offense or the offense committed by the principal offender, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.096, in which event the presumptive sentence shall be that for the completed offense.

III. Technical Modifications and Corrections – Effective January 1, 2003

A. The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences to account for the possibility of more than one sentence running consecutive to the sentence being served by the offender.

II.F. Concurrent/Consecutive Sentences:

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Under the circumstances above, it is presumptive for the sentence(s) to be consecutive to the sentence being served by the offender at the time the escape or other new offense was committed.

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B. The Commission adopted a proposal to clarify the following jail credit language.

III.C.04. The Commission also believes that jail credit should be awarded for time spent in custody as a condition of a stay of imposition or stay of execution when the stay is revoked and the offender is committed to the Commissioner of Corrections. The primary purpose of imprisonment is punishment, and the punishment imposed should be proportional to the severity of the conviction offense and the criminal history of the offender. If, for example, the presumptive duration in a case is 18 months, and the sentence was initially executed, ~~by means of a departure~~ the specified minimum term of imprisonment would be 12 months. If the execution of the sentence had initially been stayed and the offender had served four months in jail as a condition of the stay, and later the stay was revoked and the sentence executed, the offender would be confined for 16 months rather than 12 without awarding jail credit. By awarding jail credit for time spent in custody as a condition of a stay of imposition or execution, proportionality is maintained.

C. The Commission adopted a proposal to add the following Felony DWI Conditional Release Commentary to the Sentencing Guidelines.

II.E.05.M.S. § 169A.276, subd. 1(d) requires that when the court commits a person to the custody of the commissioner of corrections for first degree (felony) driving while impaired, it shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.

D. Corrections

1. Corrections to the **Severity Level Reference Table**

III Tear Gas & Tear Gas Compounds; Electronic incapacitation devices - 624.731, subd. 8(a)

I Dangerous Weapons on School Property - 609.66, 1d(a)

2. Corrections to **Theft Offense List**

Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft)
514.02, subd. 1**(b)**

3. Corrections to **Misdemeanor and Gross Misdemeanor Offense List**

~~Arson 3rd Degree~~
~~609.563; subd. 2~~

Arson in the Fourth Degree
609.5631

Burglary 4th in the Fourth Degree
609.582

4. Corrections to **Permissive Consecutive Sentences** section

Permissive Consecutive Sentences

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In addition, consecutive sentences are permissive under number 1- above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C.

5. Correction to **II.F.06.**

II.F.06. *Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$5,3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime.*

IV. Other Adopted Modifications – Effective August 1, 2003 following Legislative Review

A. The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences.

- 1. The Commission adopted a proposal to add language to indicate that Presumptive Consecutive Sentences apply to offenders who are on Conditional Release

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving, or on supervised release, conditional release, or on escape status from, an executed prison sentence.

- 2. The Commission adopted a proposal to add language to indicate that felony assaults committed while confined in a local jail or workhouse are Permissive Consecutive

Permissive Consecutive Sentences

- 7. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

B. The Commission adopted a proposal to modify the following language to II.B.2 to indicate that the Custody Status Point applies to offenders who escape before sentencing.

- 2. One point is assigned if the offender:
 - a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea or verdict in a felony, gross misdemeanor, or extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction;

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody ~~following conviction of a felony or gross misdemeanor~~ when the offense was committed for*

which they are now being sentenced. ~~Criminal justice custodial status includes: 1) probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following a felony, gross misdemeanor, or an extended jurisdiction juvenile conviction; 2) release pending sentencing following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor; or 3) if the current offense occurred within the period of the initial length of stay pronounced by the sentencing judge for a felony, gross misdemeanor, or extended jurisdiction juvenile conviction.~~

C. The Commission adopted a proposal to modify the following language in II.A.02 related to determining the date of offense to make it consistent with case law.

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II.A.02.

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b. ~~If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the earliest offense should be used as the date of the conviction offense~~ conviction offense must be determined. If there is a reasonable likelihood that all of the offender's multiple acts occurred before a date on which the presumptive sentence changed, the earlier presumptive sentence should be used. If there is no reasonable likelihood that all of the offender's multiple acts occurred before that date, the later presumptive sentence should be used. See State v. Murray, 495 N.W.2d 412, 415 (Minn. 1993)(articulating rule).

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D. The Commission adopted a proposal to rank the following unranked offenses.

V. OFFENSE SEVERITY REFERENCE TABLE

VI	Controlled Substance Crime in the Third Degree (non-aggregated offenses) – 152.023
III	<u>Registration of Predatory Offenders (2nd or subsequent violation) – 243.166 subd. 5(c)</u>
I	<u>Registration of Predatory Offenders – 243.166 subd. 5(b)</u>

II.A.03. *The following offenses were excluded from the Offense Severity Reference Table:*

- ~~13.—Controlled substance crime, third degree (aggregated offenses) – 152.023~~
- ~~40.—Registration of predatory offenders – 243.166, subd. 5~~

E. The Commission adopted a proposal to assign two units each to prior Gross Misdemeanor Criminal Vehicular Injury offenses when the current offense is felony DWI or felony Criminal Vehicular Homicide or Injury.

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing....There is the following exception to this policy when the current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or 360.0752, or 609.21~~ are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or Criminal Vehicular Homicide and Injury violations.

II.B.301.

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or injury and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129 or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury or first degree (felony) driving while impaired. ~~These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.~~

II.B.302.

The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or 360.0752, or 609.21~~ 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 and injury (CVI) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVI misdemeanor units. If there are less than four units, add in any DWI/CVI units. Four or more units would equal one point. Only DWI/CVI units can be used in calculating additional points. Each set of four DWI/CVI units would equal an additional point. For example, if an offender had two theft units and six DWI/CVI units, the theft would be added to the two DWI/CVI units to equal one point. The remaining four DWI/CVI units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVI units, the first four theft units would equal one point. Four of the DWI/CVI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVI units for a third point. The total misdemeanor score would be two.