



January 2026 Lunch & Learn: Criminal History Policies – 2.B.3 thru 2.B.7

Presented by MSGC Staff



Sentence Guidelines Policies Effective Date

Guidelines used for the “current” offense

- Each year on August 1st, a Sentencing Guidelines manual is published for offenses *committed* on or after that date.
- Each Sentencing Guidelines manual remains in effect through July 31st of the following year.
- That means that *technically*, the idea of “the current Guidelines” is not based on the calendar date; rather, it is based on the date the current conviction offense occurred.
- These are the policies that will be used to find everything related to the current offense including the severity level, modifiers or mandatory minimums, and the Grid used to find the presumptive sentence.

Guidelines used for the “current” offense

- The changes made to criminal history calculation policies that were enacted in 2019 will now apply to all offenses regardless of their offense date.
- If the current offense occurred on or before 7/31/2019, used the 2019 Sentencing Guidelines manual.
- If the offense occurred on or after 8/1/2019, use the manual in effect based on the date the offense occurred.
 - 05/01/1980-07/31/2020 – the 2019 manual
 - 08/01/2020-09/14/2021 – the 2020 manual
 - 09/15/2021-07/31/2022 – the 2021 manual
 - 08/01/2022-07/31/2023 – the 2022 manual
 - 08/01/2023-07/31/2024 – the 2023 manual
 - 08/01/2024-07/31/2025 – the 2024 manual
 - 08/01/2025-07/31/2025 – the 2025 manual

Defining a Targeted Misdemeanor – Appendix 4

Appendix 4. Targeted Misdemeanor List

(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

Under Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Statute Number	Offense Title
169A.20	Driving While Impaired
518B.01	Order for Protection Violation
609.224	Assault 5th Degree
609.2242	Domestic Assault
609.746	Interference with Privacy
609.748	Harassment or Restraining Order Violation
617.23	Indecent Exposure
629.75	Domestic Abuse No Contact Order Violation

PLEASE NOTE:

- A gross misd prior that is sentenced as a misd (90 days or less) must be on the Targeted Misdemeanor List to be included in history.**
 - Remember that a stay of imposition will remain at the offense level – this is about an imposed outside of the statutory duration.
- Of note: a felony prior sentenced to less than a felony duration is eligible to be included in criminal history regardless of its appearance (or lack of) on the Target Misdemeanor List.

The Level of Sentence: An Imposed Sentence (Prison, Jail, Stay of Execution)

Felonies: Minn. Stat. § 609.02, subd. 2

- The court records a finding of guilt.
- A minimum *sentence duration* is imposed that aligns with the sentencing date:
 - Pre-7/1/2023: 366 days
 - Post-7/1/2023: 365 days
- The disposition can be stayed or prison.
- The offense will be a felony prior based on policies in 2.B.1.

Gross Misd.: Minn. Stat. § 609.02, subd. 4

- The court records a finding of guilt.
- A *sentence duration* is imposed that aligns with the sentencing date:
 - Pre-7/1/2023: 91-365 days
 - Post-7/1/2023: 91-364 days
- The disposition can be stayed or confinement.
- The offense will be a gross misd. prior based on policies in 2.B.3.

Misd.: Minn. Stat. § 609.02, subd. 3

- The court records a finding of guilt.
- A sentence duration is imposed within misd. limits:
 - All sentencing dates: 1 - 90 days
- The disposition can be stayed or confinement.
- The offense will be a misd. prior based on policies in 2.B.3.

The Level of Sentence: A Stay of Imposition Sentence

Stay of Imposition for a Felony level offense	Stay of Imposition for a Gross Misd. level offense	Stay of Imposition for a Misd. level offense
<ul style="list-style-type: none">• The court records a finding of guilt.• No felony sentence duration is imposed, and the disposition is stayed.• The offense will be included as a felony prior based on policies in 2.B.1.• The offense is deemed a misd. when successfully completed for <i>non-criminal history purposes</i> only.	<ul style="list-style-type: none">• The court records a finding of guilt.• No gross misd. sentence duration is imposed, and disposition is stayed.• The offense will be included as a gross misd. prior based on policies in 2.B.3.• The offense will be deemed a misd. when successfully completed for <i>non-criminal history purposes</i> only.	<ul style="list-style-type: none">• The court records a finding of guilt.• No sentence duration is imposed, and the disposition is stayed .• The offense will be included as a misd. prior based on policies in 2.B.3.• The offense will be deemed a misd. when successfully completed for <i>non-criminal history purposes</i> only.

Misdemeanor and Gross Misdemeanor Criminal History: 2.B.3

* Prior Offense Type: **Misdemeanor/Gross Misdemeanor**

Sequence: 1

Jurisdiction: Jurisdiction County: Court Case Number:

* Description:

* Was offender under eligible custody status for the offense on 8/1/2018: Yes No

* Disposition Date: This prior offense will decay on 1/1/2028.

* Expiration Date:

* Units:

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- Eligible misd/gross misd priors include targeted misd offenses, non-traffic gross misd offenses receiving gross misd sentences including GM DWI, Refusal to Test, and Reckless Driving, and felony sentenced to less than a felony duration based on the sentencing date.
 - Gross misd offenses sentenced to less than the statutory duration are ineligible unless they are on the targeted misd list
- Priors are eligible for 10 years from the Disposition Date to the date the current offense occurs.
- Priors are worth 1 unit each, and 4 units make one point, which is the maximum in most cases.
- Include all priors in criminal history are *eligible* and contact MSGC to determine if there should be more than 1 point assigned (cases of felony DWI or felony CVO/CVH).
- If custody has been assigned based on this prior, be certain to mark “Yes” for the custody question.

Juvenile Criminal History: 2.B.4

* Prior Offense Type:

Sequence: 1

Jurisdiction: Jurisdiction County: Court Case Number:

* Description:

* Offense Date:

* Disposition Date:

- Juvenile priors to include are felony-level offenses committed on/after the defendant's 14th birthday and are **adjudicated delinquent in juvenile court**.
- Juvenile priors are eligible to be included when the defendant is under 25 when the current offense happened.
- Two priors make one point, which is the maximum in most cases.
- Include all priors in criminal history that meet the eligibility criteria and contact MSGC to determine if there should be more than 1 point assigned.

Enhanced Offenses: 2.B.6

- Enhanced offenses fit into two categories: DWIs and non-DWIs. The policies are:
 - A custody status point can be assigned for a targeted misd., a non-traffic gross misd., or a gross misd. DWI that is used to enhance.
 - Qualifying targeted misd. or gross misd. priors used to enhance will NOT be included in criminal history on the worksheet being completed for the enhanced felony offense.
 - Felony offenses used to enhance, including juvenile adjudication for felonies when applicable, are used in criminal history per the policies in 2.B.1 and 2.B.4.
- Keep in mind:
 - The 'enhancing' prior misd./gross misd. offenses are only removed from criminal history on the worksheet for the felony they are enhancing. They will be eligible to be used on future offenses per the policies 2.B.3 and 2.B.5.
 - Prior misd./gross misd. DWI offenses used to enhance the first felony DWI will not also be included as history in any subsequent felony DWI criminal history. They are eligible to be used as criminal history on non-DWI offenses.

Determining offense levels for priors: 2.B.7

1. Use the Guidelines in effect when the ***current*** offense occurred to find the severity level ***currently*** assigned to the offense. (2.B.7.a)
2. There may be exceptions related to the prior offense including:
 - a. as some element of the offense may have changed since it was originally sentenced; or,
 - b. a policy may indicate a change in how it will be included in criminal history. (2.B.7.a)

- ***Examples:***
 - Predatory registration violations may have originally been sentenced with a number as the severity level; it will now be equated to an H if the current offense was committed on/after 8/1/2006; or an I if committed on/after 9/15/2021.
 - Monetary thresholds for Theft/Theft-related offenses (Section 7) changed in 2007, but did not affect severity levels:
 - “Over \$500” became “over \$1,000” but remained a severity level 2 for .5 points. (2.B.7.b)
 - “Over \$2,500” became “over \$5,000” but remained a severity level 3 for 1 point. (2.B.7.b)
 - Minnesota drug offenses carry forward at same the degree they were sentenced at. When the current offense occurs on/after 8/1/16, the severity levels will be found on the Drug Offender Grid. (2.B.7.a)

Using Convictions from Jurisdictions other than Minnesota in Criminal History Calculation – 2.B.5

Who determines how non-Minnesota offenses are used in criminal history?

- Under section 2.B.5 of the *Sentencing Guidelines and Commentary*:
 - 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.
 - Sections 2.B.1 through 2.B.7 govern the use of these convictions:
 - 2.B.1 – Felony history policies
 - 2.B.2 – Custody status policies
 - 2.B.3 – Misd./gross misd. history policies
 - 2.B.4 – Juvenile policies
 - 2.B.6 – Enhanced offenses policies
 - 2.B.7 – Determining offense levels for prior offenses that may have changed – specifically, prior monetary offenses
 - By following these Guidelines policies, the court can equate the non-MN prior to a MN offense as though it had been committed in MN using the nature or definition of the offense to determine its equivalent.

How to determine the use of non-Minnesota offenses in criminal history?

- **2.B.1 for Felony policies:** the prior offense meets the statutory definition of a MN felony and received a sentence of **at least 366 days** or an equivalent Stay of Imposition.
 - A felony offense that is defined as a felony in MN but received an imposed sentence of 365 days or less is considered a gross misdemeanor or a misdemeanor depending on the sentence duration imposed.
 - A federal felony offense that received a sentence of at least 366 days but for which no comparable MN offense exists, will be given 1 point for criminal history.
- **2.B.2 for Custody policies:** a custody point of either a 0.5 point (misd/gross misd, or low-level severity offenses of D1, D2, or 1, 2) OR a full point for all other severity levels on the Grids, for an eligible prior offense.
- **2.B.3 for Misdemeanor policies:** the prior offense is the equivalent of a Targeted Misdemeanor from Minn. Stat. 299C.10, subd. 1(e) – “**a targeted misdemeanor is a misdemeanor violation of section 169A.20 (driving while impaired), 518B.01 (order for protection violation), 609.224 (fifth-degree assault), 609.2242 (domestic assault), 609.746 (interference with privacy), 609.748 (harassment or restraining order violation), 609.749 (obscene or harassing telephone calls), 617.23 (indecent exposure), or 629.75 (domestic abuse no contact order).**”

How to determine the use of non-Minnesota offenses in criminal history?

- **2.B.3 for Gross Misdemeanor policies:** the prior offense is the equivalent of a non-traffic gross misd, a gross misdemeanor Driving While Intoxicated or Refusal to Test, or a gross misdemeanor Reckless Driving.
 - **Gross misdemeanor offenses must receive a sentence of 91 to 365 days, or an equivalent Stay of Imposition, to be included.**
 - For a gross misdemeanor offense sentenced to 90 days or less, the offense must also be found on the Targeted Misdemeanor list.
- **2.B.4 for Juvenile policies:** the prior felony level offense was committed after the offender's 14th birthday and **was adjudicated delinquent in juvenile court**, will be included if the current offense was committed before the offender's 25th birthday.
 - To include a non-MN juvenile prior in MN history, it must meet the above criteria.
 - This means that if the defendant was NOT adjudicated delinquent in juvenile court, the offense can only be included in the adult felony history section if the factfinder determines that it is an offense for which the offender would have been certified to adult court if that offense had occurred in MN. 2.B.5.e
 - The companion comment for this policy is 2.B.504: 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).

Recent case law regarding non-MN offenses and criminal history calculation

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
- “**Minnesota's Sentencing Guidelines provide uniform standards for the inclusion and weighting of criminal history information that are intended to increase the fairness and equity in determining a defendant's criminal-history score.**” *State v. Washington*, 2017
- “**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

What can probation do in these situations?

- Try to alert the parties (prosecutor-defense-court) as soon as possible that non-MN offenses are present.
- Provide as much data to the parties regarding the non-MN offense including, at a minimum and as available, the statute for the conviction offense and the duration of the *imposed* sentence.
 - When the court considers a sentence, the *imposed* sentence should be the second step in the process. The sentence determines where to include the prior in criminal history, specifically for gross misd. and felony offenses.
 - A prior equates to a MN felony but the sentence was only 365 days – that goes in the M/GM section
 - A prior equates to a MN gross misd, but they went to prison in the other statute – still goes in the M/GM section of history.
- When there is no data available, or the other state is charging for a copies of documents, note this in your report.
- *TRY* to address the offenses that *may* be easier to equate, such as threshold, enhanced, or drug offenses. **But again**, these should be presented to the court with terms like “it appears” or “the documents indicate” or “it appears the offense can be equated in MN; however, the court will need to make the final decision for them to remain in criminal history.”
- Try to include as much information on the worksheet. MSGC’s responsibility in reviewing worksheets is to ensure that Guidelines policies are followed. Staff does not have access to the information used to arrive at the decision to include priors in criminal history, which means staff needs comments on the worksheet, and one comment appreciated for this situation is “The court made the decision on the inclusion of non-MN priors per 2.B.5.”

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/>

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