



MINNESOTA

**SENTENCING GUIDELINES
COMMISSION**



**MSGC's
Lunch &
Learn
Series**

**Criminal History Policies:
2.B.3 – 2.B.7:**

Before we begin: Guidelines effective dates (§ 2)

EFFECTIVE DATE for CURRENT OFFENSE

- Guidelines are in effect August 1st thru July 31st, except for 2021 – those are in effect September 15, 2021, thru July 31, 2022.
- When we use the term “current Guidelines,” we should always be referring to the Guidelines in effect when the *current offense occurred*, not those based on the calendar date.
- Use those Guidelines to find the severity level, the presumptive sentence, and any policies such as modifiers or mandatory minimums for the offense.

EFFECTIVE DATE for CRIMINAL HISTORY CALCULATION

- The policy changes made in 2019 to criminal history calculation now apply regardless of the offense date. (*State v. Robinette*)
- If you are using the Electronic Worksheet System (probation) to create the worksheet, the system has been updated to apply these policies.
- If you have a client who has not yet been sentenced for an older offense (pre-8-21-2021), be certain that you have the most up-to-date worksheet.

Change in sentence durations for Minnesota offenses under Minn. Stat. § 609.02

OFFENSES *SENTENCED* BEFORE 7/1/2023

- ✓ Felony = 366 days, or 12 months and 1 day minimum
- ✓ Gross misd = 91 to 365 days (12 months maximum)
- ✓ Misdemeanor = not more than 90 days

OFFENSES *SENTENCED* ON/AFTER 7/1/2023

- ✓ Felony = 365 days, or 12 months minimum
- ✓ Gross misd = 91 to 364 days
- ✓ Misdemeanor = not more than 90 days

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

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

- The court records a finding of guilt and a sentence duration is imposed.
- A felony sentence is defined as a sentence duration of more than one year may – minimum 1 year.
- The disposition can be a stay of execution or a commit (prison).
- The offense will be included in the felony section based on the policies in 2.B.1.

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

- The court records a finding of guilt and a sentence duration is imposed.
- A gross misd. sentence is defined as a sentence duration of 91 to 364 days.
- The disposition can be a stay of execution or local confinement (jail).
- The offense will be included in the misd./gross misd. section based on the policies in 2.B.3.

Misd.: Minn. Stat. § 609.02, subd. 3

- The court records a finding of guilt and a sentence duration is imposed.
- A misd. sentence is defined as a sentence duration of not more than 90 days.
- The disposition can be a stay of execution or local confinement (jail).
- The offense will be included in the misd./gross misd. section based on the policies in 2.B.3.

Level of Sentence: A Stay of Imposition disposition

Stay of Imposition for a Felony level offense

- The court records a finding of guilt.
- No sentence duration is imposed under Minn. Stat. § 609.02, subd. 2, 3, or 4.
- 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 *non-criminal history purposes* only.

Stay of Imposition for a Gross Misd. level offense

- The court records a finding of guilt.
- No sentence duration is imposed under Minn. Stat. § 609.02, subd. 2, 3, or 4.
- The 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 *non-criminal history purposes* only.

Stay of Imposition for a Misd. level offense

- The court records a finding of guilt.
- No sentence duration is imposed under Minn. Stat. § 609.02, subd. 2, 3, or 4.
- The disposition is stayed.
- The offense will be included as a misd. prior section based on policies in 2.B.3.
- The offense will be deemed a misd. when successfully completed for *non-criminal history purposes* only.

The Level of Sentence: A non-conviction Disposition*

- There may or may not be a guilty plea, but the court will not enter a final judgement of guilt.
- Without a final judgement of guilt, there is no conviction.
- Without a conviction, there can be no sentence imposed.
- With no sentence imposed, or no stay of imposition, a non-conviction disposition is not included in criminal history unless there is a revocation and an imposed sentence or stay of imposition.
- The revocation will be the first time a sentence is imposed, so an updated worksheet should be ordered to ensure there is no departure (without intention).

** A “non-conviction disposition” is an MSGC training term used solely to differentiate between offenses that have a final judgement of guilt – a conviction – and those that do not.*

Misd. & Gross Misd. Priors – 2.B.3

What offenses can be included:

- a targeted misd. (2.B.3.a(1) & Appendix 4))
- a non-traffic gross misd. (2.B.3.a(2))
 - a gross misd. sentenced as a misd. must be a targeted misd. to be eligible for use in criminal history (2.B.3.b)
- Gross misd. DWI (2.B.3.a(3))
- Gross misd. Refusal to Test (2.B.3.a(4))
- Gross misd. reckless Driving (2.B.3.a(5))
- Any felony conviction resulting in a misd. or gross misd. sentence (2.B.3.a(6))
- Follow the same policies as you would for felonies when counting priors from single course of conduct/multiple sentence and single course of conduct/multiple victims (2.B.3.c and 2.B.3.d)
- Decay will be 10 years from the disposition date of the prior to the date the current offense occurred (2.B.3.e)

Assigning misd/gross misd points – 2.B.3.f & 3.B.3.g

Limit of one misd/gross misd point:

- When the current offense is a felony *other than* DWI or CVO/CVH:
 - ALL priors are worth 1 unit
 - Four units make 1 point
 - 1 is the maximum number of points assigned
 - All priors should be included on the worksheet that are eligible under the policies.

No limit to assigning points:

- When the current offense is a felony DWI or CVO/CVH:
 - All non-DWI or CVO misd/gross misd priors are assigned 1 unit
 - All *eligible* misd/gross misd DWI offenses and CVO gross misd are assigned 2 units each
 - Assign the first point from:
 - the first point from 4 non-DWI or CVO priors (1+1+1+1=4); OR
 - combine 1 DWI or CVO prior and 2 non-DWI/CVO priors (2+1+1); OR
 - combine 2 DWI or CVO priors (2+2)
 - Assign an additional point, or points, from combining each set of 2 DWI or CVO priors (2+2)

Juvenile priors – 2.B.4

Offense Type

- A felony offense that was adjudicated delinquent in juvenile court – 2.B.4.a(1)

Age

- Over 14 when the eligible prior was committed – 2.B.4.a(2)
- Under 25 when the current felony is committed – 2.B.4.a(3)
- 2 priors make 1 point, which is the max number of points in most cases – 2.B.4.a
- List all eligible priors on the worksheet.

Points

- Single course of conduct/multiple sentences:
 - When multiple sentences are imposed involving a burglary, kidnapping, or meth involving a child or vulnerable adult, include only one offense in criminal history. (2.B.3.c)
 - When multiple offenses arise from a single court of conduct involving multiple victims, assign units for only the two (2) most severe. (2.B.3.d)
- Offenses that the Guidelines would presume a commit can be used to assign additional points, HOWEVER, type, age and number of priors still applies – 2. 2.B.4.b

Including non-MN priors in criminal history – § 2.B.5

Guidelines policies for computing non-MN priors apply the *same way* they do with MN priors.

- Custody status is only assigned if the offender is on an eligible status from § 2.B.2 **AND** the custody is for an eligible misd/gross misd offense (2.B.2, 2.B.3, & 2.B.5.b)
- To be used as a felony point, the prior must equate to a felony offense found in MN statutes **AND** it must have been sentenced to a minimum 366 days or an equivalent Stay of Imposition. This policy did not change for counting felonies.
- A M/GM offense must equate to a M/GM found in MN statute **AND** it must have been sentenced to a duration of not more than 90 days for a M or 365 days for a GM, or to an equivalent Stay of Imposition **AND** is eligible under the Guidelines policies in effect when current MN felony occurs. (2.B.5.b)
- A juvenile offense is eligible if it meets the criteria regarding age, offense type, and was **adjudication in juvenile court**. If it does not, the factfinder must determine if it is an offense that would be certified as an adult in MN. (2.B.5.e)
- Federal felony-level offenses with *no MN equivalent* in statute will be assigned 1 point provided it received a minimum 366 days sentence or equivalent Stay of Imposition. (2.B.5.d)

When it is unclear what the non-MN prior equates to, the MN Court must make the final determination for how to use the offense in criminal history.

Criminal history checklist for *non-DWI* felony enhanced offenses

- ✓ A qualified custody status point, as determined by 2.B.2, must be given for a targeted misd. or non-traffic gross misd that is used to enhance. (2.B.6.a)
- ✓ Qualifying misd and gross misd priors used to enhance are not listed in criminal history on the current felony. (2.B.6.a)
 - ✓ The enhancing priors are only removed from history on the current felony. It will be eligible to be used on future offenses per the policies in 2.B.3 and 2.B.5. (2.B.6.c)
- ✓ Felony offenses that are used to enhance, including juvenile adjudications for felonies if applicable, are included in criminal history provided they meet the qualifications in 2.B.1 and 2.B.4. (2.B.6.b)

Criminal history checklist for felony DWI enhanced offenses

- ✓ A qualified custody status point, as determined by 2.B.2, must be given for a targeted misd. or *non-traffic* gross misd that is used to enhance. (2.B.6.a)
- ✓ Qualifying misd/GM priors used to enhance are not listed in criminal history on the current felony DWI. (2.B.6.a)
 - ✓ These priors are removed permanently from history for all future felony DWI offenses. (2.B.6.c)
 - ✓ These priors are eligible to use in criminal history for non-DWI felony offenses (2.B.3)
- ✓ Felony Criminal Vehicular Operation or Homicide offenses convicted under subd. 1(2) thru 1(6) that are used to enhance are used in criminal history provided (2.B.1. & 2.B.3.b)

Determining offense levels for prior offenses – 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 current offense as some element of the offense may have changed since it was originally sentenced, or a policy may indicate a different way to include it in criminal history. (2.B.7.a)

Examples:

- Prior offenses from the Sex Offender Grid may have originally been sentenced with a number as the severity level; it will now be equated to a letter if the current offense was committed on/after 8/1/2006.
- Monetary thresholds for Theft/Theft-related offenses (Section 7) were changed in 2007, but not the 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 were at sentencing; after 8/1/16 they will have a different severity level based on the Drug Offender Grid. (2.B.7.a)

Save the Date and CLE Credits

Recordings & Slide Decks Available

- **10/4/2023:** Felony Policies – 2.B.1
- **11/1/2023:** Custody Policies – 2.B.2

Upcoming Lunch & Learn

- **02/07/2024:** Presumptive Sentence, Mandatory Sentences, and Modifiers (2.C, 2.E, 2.G)
- **03/06/2024:** Consecutive Sentencing – 2.F

CLE Event Codes

- **10/4/2023: 494029 (Approved)**
- **11/1/2023: 494439 (Approved)**
- **01/03/2024:497947 (Pending)**

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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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