

# Minnesota Sentencing Guidelines Commission

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## Ranges in Shaded Areas of the Grids April 16, 2015

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**Issue:** The Guidelines are ambiguous as to whether upper and lower ranges apply only to presumptive commitments, or if they apply to both presumptive commitments and presumptive stayed sentences.

MSGC staff currently record cases as durational departures when stayed sentences are pronounced at durations other than the fixed duration found in the shaded areas of the grids. (See Standard Grid, p. 8.) Recently, however, a judge, relying on a definition in the Guidelines, disputed a request for departure indicating that the pronounced 17-month stay of execution was not a departure because it was within the 20-percent range for a presumptive stay of 15 months. (See Request for Departure Report example, p. 9.)

**Considerations:** Guidelines § 2.C.1 assists in finding the presumptive sentence. It indicates that cells provide a fixed sentence duration and that Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are *presumptive commitments*. It further instructs: “If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure,....” Based on the language in § 2.C.1, one might infer that the 15-percent and 20-percent range only applies in presumptive commitment cases. (Emphasis added.)

While commentary must be read in light of the Guidelines themselves, comment 2.C.02 is in accord. It states that, “[I]n the cells in the shaded areas of the grids, the Guidelines provide a single fixed presumptive sentence length.” The original 1980 Guidelines established in the Commission’s report to the legislature wrote similarly: “Where the sentence is stayed by means of a stay of execution, the judge would pronounce a sentence of imprisonment for the duration shown in the appropriate cells, but stay its execution, ....” Minnesota Sentencing Guidelines Commission, *Report to the Legislature*, January 1980, p. 12.

However, some definitions added to the 2012 Guidelines intended to help readers interpret terms in the Guidelines may have made the intent of the ranges less clear. The definitions for “Aggravated Durational Departure” and “Mitigated Durational Departure” state that departures occur when the court pronounces a sentence outside of the 15-percent and 20-percent range. They are silent on whether the sentence must be a presumptive

commitment. In concluding that he did not impose an aggravated durational departure, the judge in our attached example appears to have relied upon the definition in Section 1.B.5.b.(1): “An ‘aggravated durational departure’ occurs when the court pronounces a duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid.” From these definitions, a reader could infer that ranges apply to both presumptive commitments and presumptive stayed sentences.

The definition for “Presumptive Range” contains some internal ambiguity. On one hand, it reads, “[T]he ‘presumptive range’ is provided for a sentence that is a *presumptive commitment*.” But it further states, “Pursuant to Minn. Stat. § 244.09, subd. 5(2), the range is 15 percent lower and 20 percent higher than the fixed duration *displayed in each cell on the Grids*.” (Section 1.B.13.c; emphases added.)

The following excerpt from Minn. Stat. § 244.09, subd. 5, is relevant to this discussion:

The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

- (1) The circumstances under which imprisonment of an offender is proper; and
- (2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines shall provide for an increase of 20 percent and a decrease of 15 percent in the presumptive, fixed sentence.

The Sentencing Guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

**Discussion for the Commission:** Staff recommends that the Commission clarify whether or not the durational range applies to presumptive stayed sentences. Two possible solutions with draft modification language are offered below.

**Option 1.** Modify the Guidelines to make it clear that ranges are not allowed for presumptive stayed sentences.

**Option 2.** Allow the Court to pronounce a stay of execution within a narrow range of 15 percent downward and 20 percent upward if the circumstances of the case are particularly mitigated or egregious, but not substantial and compelling enough to warrant a departure.

**Option 1. Modifications to Clarify Ranges Do Not Apply to Shaded Areas of the Grids:**

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**§ 1.B. Definitions**

As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.

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5. Departure. A “departure” is a pronounced sentence other than that recommended in the appropriate cell on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence.

\* \* \*

- a. Durational Departure. A “durational departure” occurs when the court orders a sentence with a duration other than the presumptive fixed duration, for presumptive stayed sentences, or outside the range, for presumptive commitment sentences, in the appropriate cell on the applicable Grid.

(1) Aggravated Durational Departure. An “aggravated durational departure” occurs when the court pronounces a duration that is higher than the presumptive fixed duration for presumptive stayed sentences, or more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid for presumptive commitment sentences.

(2) Mitigated Durational Departure. A “mitigated durational departure” occurs when the court pronounces a sentence that is lower than the presumptive fixed duration for presumptive stayed sentences, or more than 15 percent lower than the fixed duration displayed in the

appropriate cell on the applicable Grid for presumptive commitment sentences.

\* \* \*

13. Presumptive Sentence. “Presumptive sentences” are those sentences provided on the Sentencing Guidelines Grids. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.

a. Presumptive Disposition. The “presumptive disposition” is the recommendation for either a commitment or a stayed sentence.

(1) Presumptive Commitment. A “presumptive commitment” is a recommended disposition of imprisonment for cases contained in cells outside of the shaded area on the Grids.

(2) Presumptive Stayed Sentence. A “presumptive stayed sentence” is a recommendation for a stayed sentence for cases contained in the cells within the shaded area on the Grids.

b. Presumptive Duration. The “presumptive duration” is the recommended fixed sentence length in months found in the appropriate cell on the applicable Grid.

c. Presumptive Range. The “presumptive range” is provided for a sentence that is a presumptive commitment only. Pursuant to Minn. Stat. § 244.09, subd. 5(2), the range is 15 percent lower and 20 percent higher than the fixed duration as displayed in each applicable cell on the Grids.

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## **§ 2.C. Presumptive Sentence**

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level

(vertical axis). The conviction offense determines the severity level. The offender's criminal history score is computed according to section 2.B above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence.

Each cell on the Standard Grid and the Sex Offender Grid provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence. The shaded areas of the grids do not display ranges because ranges do not apply to presumptive stayed sentences. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, 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.

**2.C.02.** In the cells outside the shaded areas of the grids, the Guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell on the applicable Grid is not a departure from the Guidelines, and any sentence length given that is outside the range is a departure from the Guidelines. In the cells in the shaded areas of the grids, the Guidelines provide a single fixed presumptive sentence length. To pronounce a stayed sentence with a duration other than the presumptive fixed duration is a durational departure.

## Option 2. Modifications to Clarify Ranges Do Apply to Shaded Areas of the Grids:

### § 1.B. Definitions \* \* \*

#### 13. Presumptive Sentence. \* \* \*

- b. Presumptive Duration. The “presumptive duration” is the recommended fixed sentence length in months found in the appropriate cell on the applicable Grid.
- c. Presumptive Range. The “presumptive range” is provided for a sentence that is a presumptive commitment each presumptive duration. Pursuant to Minn. Stat. § 244.09, subd. 5(2), the range is 15 percent lower and 20 percent higher than the fixed duration displayed in each cell on the Grids.

### § 2.C. Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender’s criminal history score is computed according to section 2.B above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence.

Each cell on the Standard Grid and the Sex Offender Grid provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments of 20 percent above and 15 percent below each presumptive, fixed sentence. For cells above the solid line, ~~the~~ The Guidelines provide both a fixed presumptive duration and a range of time for that each sentence. ~~The shaded areas of the grids do not display ranges.~~

If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range—15 percent lower and 20 percent higher than the fixed duration displayed—is permissible without departure, 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.

**2.C.02.** In the cells outside the shaded areas of the grids, the Guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell on the applicable Grid is not a departure from the Guidelines, and any sentence length given that is outside the range is a departure from the Guidelines. In the cells in the shaded areas of the grids, the Guidelines provide a single fixed presumptive sentence length.

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#### 4.A. Standard Grid

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7	36 <u>31 - 43</u>	42 <u>36 - 50</u>	48 <u>41 - 57</u>	54 46 - 64	60 51 - 72	66 57 - 79	72 62 - 86
6	21 <u>18 - 25</u>	27 <u>23 - 32</u>	33 <u>29 - 39</u>	39 34 - 46	45 39 - 54	51 44 - 61	57 49 - 68
5	18 <u>16 - 21</u>	23 <u>20 - 27</u>	28 <u>24 - 33</u>	33 29 - 39	38 33 - 45	43 37 - 51	48 41 - 57
4	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	15 <u>13 - 18</u>	18 <u>16 - 21</u>	21 <u>18 - 25</u>	24 21 - 28	27 23 - 32	30 26 - 36
3	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	13 <u>12<sup>1</sup> - 15</u>	15 <u>13 - 18</u>	17 <u>15 - 20</u>	19 17 - 22	21 18 - 25	23 20 - 27
2	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	13 <u>12<sup>1</sup> - 15</u>	15 <u>13 - 18</u>	17 <u>15 - 20</u>	19 <u>17 - 22</u>	21 18 - 25
1	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	12 <sup>1</sup> <u>12<sup>1</sup> - 14</u>	13 <u>12<sup>1</sup> - 15</u>	15 <u>13 - 18</u>	17 <u>15 - 20</u>	19 17 - 22

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#### 4.B. Sex Offender Grid

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<b>D</b>	36 <u>31 - 43</u>	48 <u>41 - 57</u>	60 <u>51 - 72</u>	70 <u>60 - 84</u>	91 <u>78 - 109</u>	119 <u>102 - 142</u>	140 <u>119 - 168</u>
<b>E</b>	24 <u>21 - 28</u>	36 <u>31 - 43</u>	48 <u>41 - 57</u>	60 <u>51 - 72</u>	78 <u>67 - 93</u>	102 <u>87 - 120</u>	120 <u>102 - 120</u>
<b>F</b>	18 <u>16 - 21</u>	27 <u>23 - 32</u>	36 <u>31 - 43</u>	45 <u>39 - 54</u>	59 <u>51 - 70</u>	77 <u>66 - 92</u>	84 <u>72 - 100</u>
<b>G</b>	15 <u>13 - 18</u>	20 <u>17 - 24</u>	25 <u>22 - 30</u>	30 <u>26 - 36</u>	39 <u>34 - 46</u>	51 <u>44 - 60</u>	60 <u>51 - 60</u>

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## Standard Sentencing Guidelines Grid – Effective August 1, 2014

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 (Example offenses listed in italics)		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</i> <sup>2</sup>	426 <i>363-480</i> <sup>2</sup>
<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	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84</i> <sup>2,3</sup>
<i>Controlled Substance Crime, 3rd Degree</i>	<b>6</b>	21	27	33	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	23	28	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>	15	18	21	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>	13	15	17	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>	12 <sup>1</sup>	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>1</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	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.)

Effective August 1, 2014

18

DEC 19 2014



# MSGC REQUEST FOR DEPARTURE REPORT

Offender Name (Last, First, Middle)	County	District Court Case No.	Count No.
Judge Name	Sentence Date	Date of Offense	Date of Request
	7/24/2014	11/15/2012	11/21/2014

### Conviction Offense

Offense Modifiers (If Applicable)				
TITLE OF OFFENSE	MN STATUTE No.	SEV. LEVEL	CUSTODY Pt.	CHS (INCL. CUST.)
FINANCIAL TRANSACTION CARD FRAUD-USE-NO CONSENT	609821210	2	1	3
Presumptive Sentence – MSGC records indicate the following presumptive guidelines sentence:	Pronounced Sentence – MSGC records indicate that the following sentence was pronounced:			
STAY 15 Mos.	17 Mos.	STAY EXECUTION		

### Type of Departure

Our records indicate that the sentence pronounced in the above case was a departure from the presumptive sentence under the Sentencing Guidelines as indicated below.

AGGRAVATED DURATION

Please indicate how the sentence was imposed if the sentence was an aggravated departure.

- Jury determination of aggravating factors       Defendant waived right to jury determination of aggravating factors

### Reason(s) for Departure

Please complete Section 1 or Section 2 to indicate if the presumptive sentence or pronounced sentence is correct.

1. No Departure in this Case. Check one or more of the following:

- Criminal History score listed above is incorrect. The correct criminal history score is: \_\_\_\_\_.
- Severity Level listed above is incorrect. The correct Severity Level is: \_\_\_\_\_.
- Sentencing information listed above is incorrect. The correct pronounced sentence is: \_\_\_\_\_.

Other information listed above is incorrect. (Please explain below):

*Duration Not 20% higher than Prison Grid*

2. Sentence Imposed or Stayed Is a Departure. Please do one of the following: 1. Check the appropriate reason(s) listed on page 2 of this form; 2. Attach a copy of the Departure Report; 3. Write the reason(s) in the space below; or 4. Attach the relevant pages from the sentencing transcript.

*Wed*

MSGC use:  
1001095

Please forward this form to the Commission's office by 12/19/2014.  
If additional time is needed, please contact our office.

Please send to: Minnesota Sentencing Guidelines Commission      Voice: (651) 296-0144  
 309 Administration Building, 50 Sherburne Ave.      Fax: (651) 297-5757  
 St. Paul, Minnesota 55155      Email: [sentencing.guidelines@statc.mn.us](mailto:sentencing.guidelines@statc.mn.us)