
Minnesota Sentencing Guidelines Commission
Technical Modification: Presumptive Sentence Durations that Exceed the
Statutory Maximum
October 17, 2013

Description: Twelve offenses have presumptive durations that may exceed the statutory maximums depending on the offender’s Criminal History Score. (See Appendix 3 table under “Suggested Modifications.”) Practitioners will often use the Guidelines to determine the presumptive sentence without checking the statutory maximum in statute for the offense. If practitioners did not check the statute, these offenses may receive a sentence that would exceed the statutory maximum.

Guidelines Considerations: 2013 Minn. Sentencing Guidelines § 2.C.2, indicate that “[I]f the presumptive sentence duration in the appropriate cell on the applicable Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence.” Additionally, there is a footnote on the Sex Offender Grid directing readers to the relevant section.

Staff Recommendation: Clarify the policy as outlined below in Suggested Modifications, by adding an appendix to the Guidelines that will highlight the offenses for which this may occur, amend the footnotes on the grids, add a reference in § 2.C.2, to the new appendix (Appendix 3), and add footnotes to the applicable offenses in § 5.B, as it is used by practitioners to quickly locate the severity levels for offenses.

Suggested Modifications:

2.C. Presumptive Sentence

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2. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence. If the presumptive sentence duration in the appropriate cell on the applicable Grid exceeds the statutory maximum sentence for the conviction offense, the statutory maximum is the presumptive sentence. See Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table in Appendix 3.

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Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.2231 subd. 4(b)</u>	<u>Assault 4th Degree Motivated by bias</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.322 subd. 1(a)</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree</u>	<u>B</u>	<u>240</u>	<u>CHS 5</u>
<u>609.352 subd. 2</u>	<u>Solicitation of Children to Engage in Sexual Conduct</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.352 subd. 2a</u>	<u>Solicitation of Children to Engage in Sexual Conduct (Electronic)</u>	<u>G</u>	<u>36</u>	<u>CHS 4</u>
<u>609.485 subd. 4(a)(2)</u>	<u>Escape, Mental Illness</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.485 subd. 4(a)(4)</u>	<u>Escape from Civil Commitment</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.595 subd. 1a(a)</u>	<u>Damage to Prop Motivated by Bias</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.597 subd. 3(3)</u>	<u>Assaulting or Harming Police Horse</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.662 subd. 2(b)(2)</u>	<u>Duty to Render Aid (Substantial Bodily Harm)</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>
<u>609.713 subd. 3(a)</u>	<u>Terroristic Threats-Replica Firearm</u>	<u>1</u>	<u>12, and one day</u>	<u>CHS 3</u>

<u>Statute</u>	<u>Offense</u>	<u>Severity Level</u>	<u>Statutory Maximum (Months)</u>	<u>Exceeds Statutory Maximum At:</u>
<u>609.776</u>	<u>Interference with Emergency Comm.</u>	<u>5</u>	<u>36 months</u>	<u>CHS 4</u>
<u>617.247 subd. 3</u>	<u>Dissemination of Pictorial Representation of Minors</u>	<u>E</u>	<u>84 months</u>	<u>CHS 5</u>

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

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Statute Number	Offense Title	Severity Level
609.2231 subd. 4(b)	Assault 4th Motivated by bias	1 ^{-*}
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1 st Degree	B ^{-*}
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G ^{-*}
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G ^{-*}
609.485 subd. 4(a)(2)	Escape, Mental Illness	1 ^{-*}
609.485 subd. 4(a)(4)	Escape from Civil Commitment	1 ^{-*}
609.595 subd. 1a(a)	Damage to Prop Motivated by Bias	1 ^{-*}
609.597 subd. 3(3)	Assaulting or Harming Police Horse	1 ^{-*}
609.662 subd. 2(b)(2)	Duty to Render Aid (SBH)	1 ^{-*}
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm	1 ^{-*}
609.776	Interference with Emergency Communications	5 ^{-*}
617.247 subd. 3	Dissemination of Pictorial Representation of Minors	E ^{-*}

* Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum. See section 2.C.2 and Appendix 3 to determine the presumptive duration.

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4.A. Sentencing Guidelines Grid

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)	11	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>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	10	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>	9	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>	8	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</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84²</i>
<i>Controlled Substance Crime, 3rd Degree</i>	6	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>	5	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>	4	12 ¹	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>	3	12 ¹	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>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>



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 Guidelines section 2.E.—~~Mandatory Sentences~~, 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. Guidelines sections 2.C.—~~Presumptive Sentence~~ and 2.E.—~~Mandatory Sentences~~.

¹ 12¹=One year and one day


² Denotes statutory maximum duration. 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. Guidelines section 2.C.1-2.—~~Presumptive Sentence~~.


4.B. Sex Offender Grid

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		0	1	2	3	4	5	6 or More
<i>CSC 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree— (c)(d)(e)(f)(h) Prostitution; Sex Trafficking</i> ³ <i>1st Degree—1(a)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Prostitution; Sex Trafficking</i> <i>2nd Degree—1a</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180</i>	180 <i>153-180</i> ²
<i>CSC 2nd Degree—(a)(b)(g) CSC 3rd Degree—(a)(b)² (e)(f) Dissemination of Child Pornography (Subsequent or by Predatory Offender)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree—(c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) Use Minors in Sexual Performance Dissemination of Child Pornography</i> ²	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree— (a)(b)(e)(f) Possession of Child Pornography (Subsequent or by Predatory Offender)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 5th Degree Indecent Exposure Possession of Child Pornography Solicit Children for Sexual Conduct</i> ²	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Registration Of Predatory Offenders</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See Guidelines section 2.E. **Mandatory Sentences**, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 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 offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.

¹ 12¹=One year and one day

² Denotes statutory maximum duration. 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. Guidelines section 2.C.1-2. **Presumptive Sentence**.

³ Prostitution; Sex Trafficking is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77-108.)