SENTENCING GUIDELINES

Minnesota Sentencing Guidelines and Commentary

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Minnesota Sentencing Guidelines and Commentary

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TEXT OF GUIDELINES AND COMMENTARY

1. PURPOSE AND DEFINITIONS

A. Statement of Purpose and Principles

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history.

The sentencing guidelines shall embody the following principles:

1. In establishing and modifying the Sentencing Guidelines, the Commission's primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minnesota Statutes, section 244.09, subdivision 5.

2. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.

3. The severity of the sanction should increase in direct proportion to an increase in offense severity or the convicted felon's criminal history, or both. This promotes a rational and consistent sentencing policy.

4. Commitment to the Commissioner of Corrections is the most severe sanction that can be imposed for a felony conviction, but it is not the only significant sanction available to the court.

5. Because state and local correctional facility capacity is finite, confinement should be imposed only for offenders who are convicted of more serious offenses or who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.

6. Although the Sentencing Guidelines are advisory to the court, the presumptive sentences are deemed appropriate for the felonies covered by them. Therefore, departures from the presumptive sentences established in the Sentencing Guidelines should be made only when substantial and compelling circumstances can be identified and articulated.

B. Definitions

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

1. Commitment. "Commitment" occurs when the offender is sentenced to the custody of the Commissioner of Corrections.

2. Concurrent Sentence. When the court orders sentences to be "concurrent," the court is ordering that multiple sentences be served at the same time.

3. Consecutive Sentence. When the court orders sentences to be "consecutive," the court is ordering that multiple sentences be served one after the other in the manner described in section 2.F.

4. Criminal History Score. The "criminal history score" is comprised of criminal history factors detailed in section 2.B. The horizontal axis on the applicable grid represents the offender's criminal history score.

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 stayed sentence with a length of stay other than as provided in section 3.A.2 is also a "departure."

a. Dispositional Departure. A "dispositional departure" occurs when the court orders a disposition other than that recommended in the Guidelines.

(1) Aggravated Dispositional Departure. An "aggravated dispositional departure" occurs when the Guidelines recommend a stayed sentence but the court pronounces a prison sentence.

(2) Mitigated Dispositional Departure. A "mitigated dispositional departure" occurs when the Guidelines recommend a prison sentence but the court stays the sentence.

b. Durational Departure. A "durational departure" occurs when the court orders a sentence with a prison duration other than the presumptive fixed duration or range in the appropriate cell on the applicable Grid or when the court pronounces a length of stay other than as provided in section 3.A.2.

(1) Aggravated Durational Departure. An "aggravated durational departure" occurs when the court pronounces a prison duration that is more than 20 percent higher than the fixed duration displayed in the appropriate cell on the applicable Grid or when the court pronounces a length of stay longer than provided in section 3.A.2.

(2) Mitigated Durational Departure. A "mitigated durational departure" occurs when the court pronounces a prison sentence that is more than 15 percent lower than the fixed duration displayed in the appropriate cell on the applicable Grid.

6. Departure Report. A "departure report" is a form completed by the sentencing court when the court pronounces a sentence that is a departure from the presumptive sentence. Under Minn. R. Crim. P. 27.03, subd. 4(c), the form must be completed and submitted to the Sentencing Guidelines Commission within 15 days after sentencing.

7. Executed Sentence. An "executed sentence" is the total period of time for which an inmate is committed to the custody of the Commissioner of Corrections (sent to prison). Under Minnesota Statutes, section 244.101, the sentence consists of two parts: a minimum term of imprisonment and a maximum period of supervised release.

a. Term of Imprisonment. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the "term of imprisonment" (incarceration) is equal to two-thirds of the executed sentence.

b. Supervised Release Term. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the "supervised release term" is a period of mandatory community supervision, which is served following the end of the term of imprisonment, and is equal to one-third of the executed sentence less any applicable disciplinary confinement period.

8. Extended Jurisdiction Juvenile (EJJ). An "extended jurisdiction juvenile" is a child who, under the procedures in Minnesota Statutes, section 260B.130, has been given a stayed adult sentence and a juvenile disposition, and for whom jurisdiction of the juvenile court may continue until the child's twenty-first birthday.

9. Factfinder. The "factfinder" or finder of fact determines the facts in the case, and may be either the court or the jury.

10. Hernandize. "Hernandize" (or "Hernandizing") is the unofficial term for the process described in section 2.B.1.e of counting criminal history when multiple offenses are sentenced on the same day before the same court.

11. Local Confinement. "Local confinement" is a term of incarceration of up to one year served in a local facility, and may be pronounced by the court as a condition of probation.

12. Mandatory Minimum. The "mandatory minimum" is a minimum executed sentence duration specified in statute for offenders convicted of certain felony offenses.

13. Presumptive Sentence. "Presumptive sentences" are those sentences provided on the Sentencing Guidelines Grids and in section 3.A.2. 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. Pursuant to Minnesota Statutes, section 244.09, subdivision 5, clause (2), the range is 15 percent lower and 20 percent higher than the fixed duration displayed in each cell on the Grids.

d. Lower Range. The "lower range" is that portion of the presumptive range that is shorter than the fixed presumptive duration.

14. Sentence Modifier. A "sentence modifier" is a statute or policy that aids in defining the punishment for the underlying offense. A sentence modifier can affect either or both the duration and the disposition of the presumptive sentence. See section 2.G for policies relating to determining the presumptive sentence for offenses that include a sentence modifier.

15. Sentencing Guidelines Grids. The "Sentencing Guidelines Grids" (or "Grids") display presumptive sentences for felony offenses according to the severity level of the offense (vertical axis) and offender's criminal history score (horizontal axis).

a. Sex Offender Grid. The "Sex Offender Grid" displays the presumptive sentences for criminal sexual conduct, failure to register as a predatory offender, and related offenses as shown on the Sex Offender Grid.

b. Drug Offender Grid. The "Drug Offender Grid" displays the presumptive sentences for controlled substance crime, failure to affix stamp, and related offenses as shown on the Drug Offender Grid.

c. Standard Grid. The "Standard Grid" displays the presumptive sentences for felony offenses not on the Sex Offender Grid or Drug Offender Grid.

16. Sentencing Worksheet. The "Sentencing Worksheet" (or "Worksheet") is a form completed by probation at the direction of the court under Minnesota Statutes, section 609.115, subdivision 2a. The Worksheet reflects the severity of the current conviction offense, applicable history as calculated under Sentencing Guidelines policies, and the presumptive sentence as reflected in the appropriate cell of the applicable Grid. A separate Worksheet should be completed for all felony-level offenses receiving a stayed or imposed sentence, or a stay of imposition. This includes offenses that receive a life sentence and felony convictions for which the court imposes a gross misdemeanor or misdemeanor sentence.

17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex

Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Drug offenses are arranged on the Drug Offender Grid into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

18. Statutory Maximum. The "statutory maximum" is the maximum sentence duration provided for the offense in statute (e.g., "imprisonment for not more than 15 years").

19. Stayed Sentence. A "stayed sentence" may be accomplished by either a stay of imposition or a stay of execution. There are two steps in sentencing: the imposition of a sentence and the execution of the sentence imposed. The imposition of sentence consists of pronouncing the sentence to be served in prison (for example, three years imprisonment). The execution of an imposed sentence consists of transferring the felon to the custody of the Commissioner of Corrections to serve the prison sentence.

a. Stay of Imposition. A "stay of imposition" occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence. If the offender successfully completes the stay, the case is discharged, and the conviction is deemed a misdemeanor under Minnesota Statutes, section 609.13, but is still included in criminal history under section 2.B.

b. Stay of Execution. A "stay of execution" occurs when the court accepts and records a finding or plea of guilty, and a prison sentence is pronounced, but is not executed. If the offender successfully completes the stay, the case is discharged, but the offender continues to have a record of a felony conviction, which is included in criminal history under section 2.B.

2. DETERMINING PRESUMPTIVE SENTENCES

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date of the conviction offense, except that:

(1) If multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.

(2) If offenses have been aggregated under one of the following statutes, or as otherwise permitted by statute, the date of the earliest offense should be used as the date of the conviction offense:

Statute Number	Offense Title
349.2127, subds. 2 and 6	Gambling Regulations
609.322, subd. 1c	Solicitation, Promotion, and Inducement of Prostitution; Sex Trafficking
609.52, subd. 3(5)	Theft
609.527, subd. 7	Identity Theft
609.535, subd. 2a(b)	Issuance of Dishonored Checks
609.551, subd. 3	Rustling and Livestock Theft
609.595	Criminal Damage to Property
609.631, subd. 4	Check Forgery

609.632, subd. 5	Counterfeiting Currency
609.763, subd. 3	Lawful Gambling Fraud
609.821, subd. 3	Financial Transaction Card Fraud
609.86, subd. 3(2)	Commercial Bribery
609.893, subd. 3	Telecommunications Fraud
609.895, subd. 3	Counterfeited Intellectual Property

The presumptive sentence is found in the cell of the appropriate Grid located at the intersection of the criminal history score and the severity level. The Grids represent the two dimensions most important in sentencing decisions.

A. Offense Severity

1. General Rule. The applicable offense severity level is determined by the conviction offense, not the charging offense. The severity level for each felony offense is found in section 5.A, Offense Severity Reference Table.

2. Theft and Damage to Property; Foreseeable Risk of Bodily Harm. For an offender sentenced for theft under Minnesota Statutes, section 609.52, subdivision 3a, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table if the offense creates a foreseeable risk of bodily harm to another and:

a. the violation involves a monetary value over $1,000; or

b. the violation involves a monetary value between $500 and $1,000, and the offender has been convicted within the preceding five years for an offense under Minnesota Statutes, section 609.52, subdivision 3.

3. First-Degree Murder. A severity level has not been assigned to first-degree murder because by law the punishment is a mandatory life sentence.

4. Unranked Offenses. Some offenses are designated as unranked offenses. When the court sentences an unranked offense, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. The court may consider, but is not limited to, the following factors:

a. the gravity of the specific conduct underlying the unranked offense;

b. the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;

c. the conduct of and severity level assigned to other offenders for the same unranked offense; and

d. the severity level assigned to other offenders engaged in similar conduct.

If an offense is omitted from the Offense Severity Reference Table, the offense is considered unranked.

5. Attempts, Conspiracies, and Other Sentence Modifiers. When the current offense includes a sentence modifier, such as attempt or conspiracy, the severity level is found by determining the

severity level for the underlying offense. Determining the presumptive sentence for these offenses is described in section 2.G.

Comment

2.A.01. *The date of the offense is important because the offender's age at the time of the offense will determine whether the juvenile record is considered, and the date of the offense might determine whether a custody status point should be given and the order of sentencing with multiple convictions.*

2.A.02. *If multiple offenses are an element of the offense and the determination of which presumptive sentence applies depends on the offense date, the date of the conviction offense must be determined by the factfinder. See State v. DeRosier, 719 N.W.2d 900 (Minn. 2006) (where defendant was charged with first-degree criminal sexual conduct occurring from June through August of 2000 and the presumptive sentence increased on August 1, 2000, from 86 to 144 months, the court erred when it made a finding without a jury that the offense occurred after the effective date of the increased presumptive sentence).*

2.A.03. *If the offense occurred on or before April 30, 1980, the Sentencing Guidelines should not be used to sentence the case.*

2.A.04. *An unranked offense typically has one or more of the following characteristics: (1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense is new and the severity of a typical offense cannot yet be determined. If a significant number of future convictions are obtained under one or more of the unranked offenses, the Commission will reexamine the ranking of these offenses and assign an appropriate severity level for a typical offense. Practitioners can contact the Commission for information on severity levels assigned to unranked offenses.*

2.A.05. *For Theft of a Motor Vehicle, to be ranked at Severity Level 4, the offender must be convicted under the general theft statute, Minnesota Statutes, section 609.52, subdivision 2, paragraph (a), clause (1), and the offense must involve theft of a motor vehicle. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at Severity Level 4, regardless of the value of the motor vehicle.*

2.A.06. *When a sentencing worksheet is completed under Minnesota Statutes, section 609.115, subdivision 2a, for first-degree murder, Severity Level 12 should be used.*

2.A.07. *When an offender is convicted of two or more felony offenses arising from a single behavioral incident, Minnesota Statutes, section 609.035, "contemplates that a defendant will be punished for the 'most serious' of the offenses." State v. Kebaso, 713 N.W.2d 317, 322 (Minn. 2006). When this occurs, the applicable severity level to use in determining the presumptive sentence is the severity level assigned to the offense being sentenced, which is ordinarily the most serious offense.*

B. Criminal History

The horizontal axis on the Sentencing Guidelines Grids is the criminal history score. An offender's criminal history score is the sum of points from eligible:

(1) prior felonies;

(2) custody status at the time of the offense;

(3) prior misdemeanors and gross misdemeanors; and

(4) prior juvenile adjudications.

This section details the requirements for calculating the criminal history points in each of these areas. This section also details the requirements for calculating criminal history points for convictions from jurisdictions other than Minnesota and convictions for enhanced felonies.

Comment

2.B.01. *The Guidelines reduce the emphasis given to criminal history in sentencing decisions. Under past judicial practice, criminal history was the primary factor in dispositional decisions. Under the Guidelines, the conviction offense is the primary factor, and criminal history is a secondary factor in dispositional decisions. Prior to enactment of the Guidelines, there were no uniform standards regarding what should be included in an offender's criminal history, no weighting format for different types of offenses, and no systematic process to check the accuracy of the information on criminal history.*

2.B.02. *The Guidelines provide uniform standards for the inclusion and weighting of criminal history information. The sentencing hearing provides a process to assure the accuracy of the information in individual cases.*

2.B.03. *Minnesota Statutes, section 609A.03, subdivision 7a, paragraph (b), provides, in part:*

Notwithstanding the issuance of an expungement order:

(1) except as provided in clause (2), an expunged record may be opened, used, or exchanged between criminal justice agencies without a court order for the purposes of initiating, furthering, or completing a criminal investigation or prosecution or for sentencing purposes or providing probation or other correction services;

(2) when a criminal justice agency seeks access to a record that was sealed under Minnesota Statutes, section 609A.02, subdivision 3, paragraph (a), clause (1), after an acquittal or a court order dismissing for lack of probable cause, for purposes of a criminal investigation, prosecution, or sentencing, the requesting agency must obtain an ex parte court order after stating a good-faith basis to believe that opening the record may lead to relevant information.

1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a. and b., to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid

SEVERITY LEVEL	POINTS
1-2, D1-D2	1/2
3-5, D3-D5	1
6-8, D6-D7	1 1/2
9-11, D8-D9	2

Murder 1st Degree	2
A	2
B-E	1 1/2
F-G	1
H	1/2 (for first offense); 1 (for subsequent offenses)

b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid

SEVERITY LEVEL	POINTS
1-2, D1-D2	1/2
3-5, D3-D5	1
6-8, D6-D7	1 1/2
9-11, D8-D9	2
Murder 1st Degree	2
A	3
B-C	2
D-E	1 1/2
F-G	1
H	1/2 (for first offense); 1 (for subsequent offenses)

c. Felony Decay Factor. In computing the criminal history score, a prior felony sentence or stay of imposition following a felony conviction must not be used if all of the following, to the extent applicable, occurred before the date of the current offense:

(1) the prior felony sentence or stay of imposition expired or was discharged;

(2) a period of fifteen years elapsed after the date of the initial sentence following the prior conviction; and

(3) if the prior felony sentence was executed, a period of fifteen years elapsed after the date of expiration of the sentence.

d. Assigning Felony Weights - Previous Court Appearances Resulting in Multiple Sentences. Following are exceptions to including prior felonies in criminal history when multiple felony sentences were imposed in a previous court appearance:

(1) Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.585, or 609.251, include in criminal history only the weight from the offense at the highest severity level.

(2) Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, include in criminal history only the weights from the two offenses at the highest severity levels.

e. Assigning Felony Weights - Current Multiple Sentences. Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred. As each offense is sentenced, include it in the criminal history on the next offense to be sentenced (also known as "*Hernandizing*") except as follows:

(1) Single Course of Conduct / Multiple Sentences. When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minnesota Statutes, section 152.137, 609.585, or 609.251, the conviction and sentence for the "earlier" offense does not increase the criminal history score for the "later" offense.

(2) Single Course of Conduct / Multiple Victims. When multiple current convictions arise out of a single course of conduct in which there were multiple victims, weights are given only to the two offenses at the highest severity levels.

f. Prior Offense with Attempt, Conspiracy, or Other Sentence Modifier. When a prior offense included a sentence modifier, such as attempt, conspiracy, or other sentence modifier as described in section 2.G, the prior conviction must be given the same felony weight as a completed offense.

g. Prior Offenses with No Conviction. Assign no weight to an offense for which a judgment of guilty has not been entered before the current sentencing, such as a stay of adjudication or continuance for dismissal.

h. Non-Felony Sentence. When a prior felony conviction resulted in a non-felony sentence (misdemeanor or gross misdemeanor), the conviction must be counted in the criminal history score as a misdemeanor or gross misdemeanor conviction as indicated in section 2.B.3.

i. Total Felony Points. The felony point total is the sum of the felony weights. If the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number.

Comment

2.B.101. *The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given for a felony level offense, no matter what period of probation is pronounced, before the current sentencing.*

2.B.102. *No partial points are given -- thus, an offender with less than a full point is not given that point. For example, an offender with a total weight of 2 1/2 would have 2 felony points.*

2.B.103. *The Commission determined that it was important to establish a weighting scheme for prior felony sentences to assure a greater degree of proportionality in the current sentencing. Offenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses.*

2.B.104. *The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. For that reason, the severity level of the prior offense is based on the severity level in effect when the offender commits the current offense.*

2.B.105. *If an offense has been repealed, but the elements of that offense have been incorporated into another felony statute, determine the appropriate severity level based on the severity level ranking for the current felony offense containing those similar elements. For example, in 2010, the Legislature recodified violations of domestic abuse no contact orders from Minnesota Statutes, section 518B.01, subdivision 22, paragraph (d), into Minnesota Statutes, section 629.75, subdivision 2, paragraph (d). This policy also applies to offenses that are currently assigned a severity level ranking, but were previously unranked and excluded from the Offense Severity Reference Table. For example, dissemination of child pornography under Minnesota Statutes, section 617.247, subdivision 3, paragraph (a), was unranked until August 1, 2006. It is currently ranked at Severity Level E, and receives a weight of 1-1/2 points.*

2.B.106. *If the prior offense has been removed from the current Severity Offense Reference Table in response to a legislative action that repealed the prior offense and created separate offenses with new or removed elements, use the current severity level for the newly created offense that has been added to Severity Offense Reference Table and encompasses the behavior necessarily proven by the prior conviction. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.*

2.B.107. *In cases of multiple offenses occurring in a single course of conduct in which state law prohibits the offender from being sentenced on more than one offense, only the offense at the highest severity level should be considered. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing the criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same court, sentencing must occur in the order in which the offenses occurred. The dates of the offenses must be determined according to the procedures in section 2.*

2.B.108. *The Commission established policies to deal with several specific situations that arise under Minnesota law: a conviction under Minnesota Statutes, section 152.137, under which offenders convicted of methamphetamine-related crimes involving children and vulnerable adults are subject to conviction and sentence for other crimes resulting from the same criminal behavior; Minnesota Statutes, section 609.585, under which offenders committing another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony; and a conviction under Minnesota Statutes, section 609.251, under which offenders who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minnesota Statutes, section 152.137, 609.585, or 609.251. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.*

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day under Minnesota Statutes, section 152.137, 609.585, or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

2.B.109. *The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minnesota Statutes, sections 152.137, 609.585, and 609.251. The Commission's decision not to amend the Sentencing Guidelines is deliberate. See, State v. Williams, 771 N.W.2d 514 (Minn. 2009).*

2.B.110. *To limit the impact of past variability in prosecutorial discretion, the Commission decided that for prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses. For example, if an offender had robbed a crowded liquor store, he could be convicted of and sentenced for the robbery, as well as one count of assault for every person in the store at the time of the offense. Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission limited consideration to the two most severe offenses in such situations. This still allows differentiation between those getting multiple sentences in such situations from those getting single sentences, but it prevents the perpetuation of gross disparities from the past.*

This limit in calculating criminal history when there are multiple felony sentences arising out of a single course of conduct with multiple victims also applies when such sentences are imposed on the same day.

2.B.111. *When an offender was convicted of a felony but was given a misdemeanor or gross misdemeanor sentence, the offense will be counted as a misdemeanor or gross misdemeanor for purposes of computing the criminal history score. The Commission also recognized that where such sentences were given, it was the opinion of the court that the offending behavior did not merit felonious punishment, or other circumstances existed that justified a limit on the severity of the sanction.*

2.B.112. *The decision to stay execution of sentence rather than to stay imposition of sentence as a means to a probationary term following a felony conviction is discretionary with the court. Considerable disparity appears to exist in the use of these options. In the case of two similar offenders it is not uncommon for one to receive a stay of execution and another to receive the benefit of a stay of imposition. There may also be geographical disparities. As a result of the disparity that exists in the use of stays of imposition, the Commission determined to treat stays of execution and stays of imposition the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.*

2.B.113. *The Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences and stays of imposition, but also the age of the sentences and stays of imposition. The Commission decided that the presence of old felony sentences and stays of imposition should not be considered in computing criminal history scores after a significant period of time has elapsed. A prior felony sentence or stay of imposition will not be counted in criminal history score computation if fifteen years has elapsed from the prior sentencing date (or from the date the prison sentence, if executed, expired) to the date of the current offense, provided the offender was then no longer on supervision for the prior sentence. If the offender received a stay of imposition for the prior offense, that sentencing date marks "the date of the initial sentence," even if a stay of execution subsequently occurred as the result of, e.g., a probation violation. While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application, while also ensuring that prison offenses do not decay before probation offenses.*

2.B.114. *An offense upon which a judgment of guilty has not been entered before the current sentencing (e.g., under Minnesota Statutes, section 152.18, subdivision 1), must not be assigned any weight in computing the criminal history score.*

2.B.115. *Under Minnesota Statutes, section 260B.130, a child alleged to have committed a felony offense under certain circumstances may be prosecuted as an extended jurisdiction juvenile (EJJ). If the prosecution results in a guilty plea or finding of guilt and the court imposes a disposition according to Minnesota Statutes, section 260B.130, subdivision 4, paragraph (a), the extended jurisdiction juvenile conviction must be treated the same as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under section 2.B.1, and corresponding commentary apply to EJJ convictions. If the EJJ conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.*

2.B.116. *Legal authorities use the terms "single course of conduct" and "single behavioral incident" interchangeably. In the Guidelines, this is referred to as "single course of conduct."*

2. Custody Status at the Time of the Offense.

a. One or One-Half Custody Status Point. Assign **one** custody status point when the conditions in paragraphs (1), (2), and (3)(ii) or (iii) are met. In all other cases when the conditions in paragraphs (1) through (3) are met, assign **one-half** custody status point:

(1) The offender was under one of the following custody statuses at the time the current offense was committed:

(i) probation;

(ii) parole;

(iii) supervised release;

(iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);

(v) release pending sentencing;

(vi) confinement in a jail, workhouse, or prison pending or after sentencing; or

(vii) escape from confinement following an executed sentence.

(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction.

(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:

(i) a felony currently assigned a severity level ranking, on the Offense Severity Reference Table, of 1 or 2 on the Standard Grid or D1 or D2 on the Drug Offender Grid, a felony from a jurisdiction other than Minnesota equivalent to an offense currently ranked at one for those severity levels, or an extended jurisdiction juvenile (EJJ) conviction for an offense currently ranked at one of those severity levels;

(ii) any other felony;

(iii) any other EJJ conviction;

(iv) a non-traffic gross misdemeanor;

(v) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or

(vi) a targeted misdemeanor.

(4) Assigning Points to Offenses Committed Over Time. Assign one or one-half custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:

(i) multiple offenses are an element of the conviction offense; or

(ii) the conviction offense is an aggregated offense.

b. Two Custody Status Points. Assign **two** custody status points if:

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166); and

(2) the offender qualifies for one custody status point, as described in section a, above, for an offense currently found on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166).

c. Additional Duration. An **additional three months** must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, when:

(1) at least one-half custody status point is assigned; and

(2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more).

Three months must also be added to the lower and upper end of the range provided in the appropriate cell on the applicable Grid.

If the current conviction is an attempt, conspiracy, or other offense with a sentence modifier that reduces the presumptive sentence, the three months must be added to the cell duration before the duration is reduced as outlined in section 2.G. The presumptive duration, however, cannot be less than one year and one day.

d. No Custody Status Points Assigned. The offender must not be assigned custody status points when:

(1) The offender was committed for treatment or examination under Minn. R. Crim. P. 20.

(2) The offender was on juvenile custody status other than for an extended jurisdiction juvenile (EJJ) conviction, at the time the adult felony was committed.

(3) The offender was on custody status for a misdemeanor or gross misdemeanor DWI committed when the offender was 16 or 17 years old, and the DWI was processed in adult court under Minnesota Statutes, section 260B.225, subdivisions 3 and 8.

e. Waiver. Subject to the limitations in paragraph (4) below, the court, on its own motion or on the motion of a party, may, but is not required to, waive assignment of a custody status point or half-point pursuant to section 2.B.2, provided the offender establishes that granting a waiver is consistent with public safety. Specifically, the court has the discretion, but is not required, to grant a waiver if the offender establishes that waiver is consistent with public safety and promotes the traditional purposes of sentencing which are retribution, incapacitation, deterrence, restitution, and rehabilitation. See Minnesota Statutes, section 244.09. In considering rehabilitation, the court may examine the following:

(1) Whether the offender has consistently utilized available probation services, such as drug, alcohol, and psychological treatment services, and has otherwise been in substantial compliance with the conditions of probation, parole, or conditional or supervised release, apart from the commission of the current offense, for the past twelve months;

(2) Whether the current offense represents an escalation of criminal activity; and

(3) Whether the offender has made any progress toward rehabilitation and reentry into society, such as additional education and/or vocational training.

(4) The court may not, however, waive assignment of a custody status point or half-point if either the current offense or a custody status offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. As used within this paragraph, "custody status offense" means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above.

(i) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of 8, 9, 10, or 11 on the Standard Grid;

(ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166);

(iii) an offense currently assigned a severity level ranking, on the Offense Severity Reference Table, of D8 or D9 on the Drug Offender Grid;

(iv) an offense listed in section 8, Severe Violent Offense List;

(v) Fleeing Peace Officer (Great Bodily Harm) (Minnesota Statutes, section 609.487, subdivision 4, paragraph (b)); or

(vi) an attempt or conspiracy to commit one of these offenses.

Comment

2.B.201. *The basic rule assigns offenders one or one-half point if they were under some form of eligible criminal justice custody status when they committed the offense for which they are now being sentenced.*

2.B.202. *The Commission intended to avoid criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point.*

2.B.203. *In determining whether to grant a waiver in a particular case, the primary consideration is public safety. In this context, public safety means protecting the public from crime. The court should consider the values of retribution, incapacitation, deterrence, restitution, and rehabilitation. In doing so, the court should apply a balanced approach in which all five values are examined and applied. For rehabilitation, the court may also consider the three factors listed in section 2.B.2.e in order to examine the whole person. When custody status is waived, the presumptive sentence will be calculated without the addition of the waived custody status point, or half-point, in the criminal history score. Thus, provided the processes of section 2.B.2.e are followed, granting a waiver of custody status for the current offense does not, in itself, constitute a departure from the Sentencing Guidelines.*

2.B.204. *Commitments under Minn. R. Crim. P. 20 and juvenile custody status are not included because, in those situations, there has been no conviction. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile (EJJ) conviction.*

2.B.205. *The custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test, gross misdemeanor reckless driving, or misdemeanor on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e). Thus, an offender who commits a new felony while on pre-trial diversion or pre-trial release on another charge does not get a custody status point. Likewise, offenders serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), do not receive a custody status point, even if the court imposed the misdemeanor sentence upon conviction of a gross misdemeanor or felony.*

2.B.206. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired (DWI) offenses and the serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses.*

2.B.207. *The most problematic consequence of a Criminal History Score of 7 or more (in excess of the maximum points differentiated by the Sentencing Guidelines Grids) is that no additional penalty accrues for engaging in felonious behavior while under custody supervision. For example, if an offender has a Criminal History Score of 7 and is released pending sentencing for a Severity Level 3 offense, and he or she commits another Severity Level 3 offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. A presumption exists against consecutive sentences for most property offenses, and therefore no additional penalty results when this situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

2.B.208. *While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above seven is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current conviction offense. Criminal history is of secondary importance, and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grid and with the special provision for maintaining the impact of the custody status provision. The Commission deems further differentiation unnecessary to achieve proportionality in sentencing.*

2.B.209. *The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, offenders should receive a custody status point if they become subject to one of the custody status types listed in section 2.B.2.a(1) at any point during the time period in which the offenses occurred. While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the offender's status at the time of the earliest date of offense.*

2.B.210. *When offenders on any custody status condition listed in section 2.B.2.b for a sex offense commits another sex offense, they are assigned an additional custody status point. The Commission believes that offenders who commit a subsequent sex offense pose so significant a risk to public safety that their criminal history scores should be enhanced to reflect this risk. This policy*

does not apply to the offense of Failure to Register as a Predatory Offender (Minnesota Statutes, section 243.166).

2.B.211. *Assign a custody status point to an offender on any custody status type who absconds and commits a new felony offense. The custody status type depends on the form of supervision that exists when the offender commits a new offense. For example, assign a custody status point to an offender who absconds from supervised release and commits a new felony offense. The custody status type would be "supervised release."*

3. Prior Gross Misdemeanors and Misdemeanors. Prior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points. Four units equal one criminal history point; give no partial point for fewer than four units. Determine units as specified in this section.

a. General Assignment of Units. Except as provided in paragraph g, assign the offender one unit for each prior conviction of the following offenses provided the offender received a stayed or imposed sentence or stay of imposition for the conviction before the current sentencing:

(1) targeted misdemeanor, as defined in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e);

(2) non-traffic gross misdemeanor;

(3) gross misdemeanor driving while impaired;

(4) gross misdemeanor refusal to submit to a chemical test;

(5) gross misdemeanor reckless driving;

(6) a felony conviction resulting in a misdemeanor or gross misdemeanor sentence.

b. Gross Misdemeanors Sentenced as Misdemeanors. A gross misdemeanor conviction resulting in a misdemeanor sentence for an offense not defined as a targeted misdemeanor under Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), must **not** be used to compute units.

c. Single Course of Conduct / Multiple Sentences. When multiple sentences for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.251, or 609.585, the offender must not be assigned more than one unit.

d. Single Course of Conduct / Multiple Victims. When multiple offenses arising from a single course of conduct involving multiple victims were sentenced, assign only the two most severe offenses units in criminal history.

e. Decay Factor. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction must **not** be used in computing the criminal history score if ten years have elapsed between the date of the initial sentence following the prior conviction and the date of the current offense. However, misdemeanor sentences that result from the successful completion of a stay of imposition for a felony conviction are subject to the felony decay factor in section 2.B.1.c.

f. Maximum Assignment of Points. Except as provided in paragraph g, an offender cannot receive more than one point for prior misdemeanor or gross misdemeanor convictions.

g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minnesota Statutes, section 169A.20, 169A.31,

169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114, two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes. For Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction), assign no misdemeanor units to the qualified prior driving offense that was used to increase the statutory maximum penalty.

h. Prior Misdemeanor or Gross Misdemeanor Driving While Impaired (DWI) Committed by Juvenile Offenders. Assign no units under this section if the offender was 16 or 17 years old when the prior misdemeanor or gross misdemeanor DWI was committed, and the DWI was processed in adult court under Minnesota Statutes, section 260B.225, subdivisions 3 and 8.

Comment

2.B.301. *The Commission established a measurement procedure based on units for misdemeanor and gross misdemeanor sentences, which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors and gross misdemeanors are assigned one unit. An offender must have a total of four units to receive one point in the criminal history score, thus an offender with three units is assigned no point value.*

2.B.302. *The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI-related offenses) to create a more proportional weighting scheme for prior felonies at Severity Level 1 and Severity Level 2 which receive a weight of 1/2 point each. The Commission believes that a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.*

2.B.303. *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because, with no limit on point accrual, offenders with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and thus be subject to inappropriately severe sentences upon their first felony conviction. The Commission limited consideration of misdemeanors to particularly relevant misdemeanors under existing state statute. Offenders whose criminal record includes at least four prior sentences for misdemeanors on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), non-traffic gross misdemeanors, gross misdemeanor reckless driving, and gross misdemeanor driving while impaired or refusal to submit to a chemical test are considered more culpable and are given an additional criminal history point.*

2.B.304. *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first-degree (felony) driving while impaired, and who have prior violations under Minnesota Statutes, section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114, 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 or operation (CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVO misdemeanor units. If there are less than four units, add in any DWI/CVO units. Four or more units would equal one point. Only DWI/CVO units can be used in calculating additional points. Each set of four DWI/CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/CVO units, the theft would be added to the two DWI/CVO units to equal one point. The remaining four DWI/CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVO units, the first four theft units would equal one point. Four of*

the DWI/CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CVO units for a third point. The total misdemeanor score would be two.

When the current offense is a conviction under Minnesota Statutes, section 609.2112, subdivision 1, paragraph (b) (Death, and Qualified Prior Conviction), or Minnesota Statutes, section 609.2114, subdivision 1, paragraph (b) (Death to an Unborn Child, and Qualified Prior Conviction), the Commission excluded consideration of the qualified prior driving offense, if a misdemeanor or gross misdemeanor, from the criminal history score because, by virtue of the conviction offense, the qualified prior conviction has been accounted for in the enhanced penalty.

2.B.305. *For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minnesota Statutes, section 152.137, 609.251, or 609.585. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to these statutes, to prevent systematic manipulation of these statutes in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved. References are made to felony convictions under Minnesota Statutes, sections 152.137, 609.251, and 609.585, in the event that they result in a misdemeanor or gross misdemeanor sentence.*

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minnesota Statutes, sections 152.137, 609.251, and 609.585. The Commission made a deliberate decision not to amend the Sentencing Guidelines. See State v. Williams, 771 N.W.2d 514 (Minn. 2009).

2.B.306. *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated for felony offenses; however, given that these offenses are less serious, the decay period is ten years rather than 15.*

2.B.307. *Convictions that are petty misdemeanors by statutory definition, that have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or that are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02 are not used to compute the criminal history score.*

2.B.308. *When multiple misdemeanor or gross misdemeanor sentences arose out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses for purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile adjudications.*

4. Prior Juvenile Adjudications.

a. Assignment of Points for Juvenile Adjudications. Assign an offender one point for every two adjudications for felony offenses the offender committed, and for which the offender was prosecuted as a juvenile, provided that:

(1) each adjudication must have been for a separate offense or must have involved separate victims in a single course of conduct, except as provided in paragraphs c. and d. below; and

(2) the juvenile adjudications must have been for offenses committed after the offender's fourteenth birthday; and

(3) the offender was under the age of twenty-five when the offender committed the current felony.

b. Maximum Points for Juvenile Adjudications. An offender may receive only **one point** for juvenile adjudications as described in this section, except that the point limit does not apply to juvenile adjudications for offenses for which the Sentencing Guidelines would presume imprisonment if the offenses had been committed by an adult. Make this determination regardless of the criminal history score, and include offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section 2.C.

c. Single Course of Conduct / Multiple Sentences. When multiple adjudications for a single course of conduct were imposed under Minnesota Statutes, section 152.137, 609.251, or 609.585, only one offense may be used in the criminal history calculation.

d. Single Course of Conduct / Multiple Victims. When the prior adjudications involve multiple offenses arising from a single course of conduct involving multiple victims, include only the two most severe offenses in criminal history.

Comment

2.B.401. *Juvenile history is included in the criminal history score to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history score. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

2.B.402. *Only juvenile adjudications for offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Exclude from consideration status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses.*

2.B.403. *Consistent with Minnesota Statutes, section 609.035, which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile adjudications for offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.*

2.B.404. *The juvenile adjudications must result from offenses committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date of adjudication to eliminate variability in application based on differing juvenile court practices.*

2.B.405. *Juvenile adjudications will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 when they committed the felony for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.*

2.B.406. *The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 point on the basis of prior juvenile adjudications. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the Guidelines would presume imprisonment, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or H), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history*

score computations to prior juvenile offenses. Two juvenile adjudications are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.

2.B.407. *To provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with adjudications arising from a single course of conduct when single victims are involved, and when the adjudications involved provisions of Minnesota Statutes, section 152.137, 609.251, or 609.585, consideration should be given to only the most severe offense with an adjudication when computing criminal history.*

When there are multiple felony offenses with adjudications arising out of a single course of conduct in which there were multiple victims, consideration should be given only to the two most severe felony offenses with adjudications when computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.

The Commission has carefully considered the application of the Hernandez method to sentencing in provisions of Minnesota law other than Minnesota Statutes, sections 152.137, 609.251, and 609.585. The Commission made a deliberate decision not to amend the Sentencing Guidelines. See State v. Williams, 771 N.W.2d 514 (Minn. 2009).

5. Convictions From Jurisdictions Other Than Minnesota.

a. In General. 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. The court should consider, but is not limited to, the factors in paragraphs b through e, below. Sections 2.B.1 through 2.B.7 govern the use of these convictions.

b. How to Count. Find the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense. The section in which to count the non-Minnesota offense in criminal history depends on:

(1) whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; **and**

(2) the sentence imposed.

An offense may be counted as a felony only if it would **both** be defined as a felony in Minnesota, and the offender received a sentence that in Minnesota would be a felony-level sentence, which includes the equivalent of a stay of imposition. The offense definitions in effect when the current Minnesota offense was committed govern the designation of non-Minnesota convictions as felonies, gross misdemeanors, or misdemeanors.

c. Assigning Felony Weights. Section 2.B.1 governs the weight of a prior felony conviction from a jurisdiction other than Minnesota, and must be based on the severity level of the equivalent Minnesota felony offense.

d. Federal Offenses; No Minnesota Equivalent. Federal felony offenses that received a sentence that in Minnesota would be a felony-level sentence, but for which no comparable Minnesota offense exists, must receive a weight of one in computing the criminal history score.

e. Juvenile Offenses From Other Jurisdictions. Minnesota law governs the inclusion of a prior felony offense from jurisdictions other than Minnesota committed by an offender who was under 18 years old in the juvenile section or adult section of the criminal history score. The offense should be included in the juvenile history section only if it meets the requirements in section 2.B.4. The prior can be included in the adult history section only if the factfinder determines that it is an

offense for which the offender would have been certified to adult court if it had occurred in Minnesota.

Comment

2.B.501. *Convictions from jurisdictions other than Minnesota include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations.*

2.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history score. No uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor" exists. Therefore, the Commission recognizes that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined by current Minnesota offense definitions and sentencing policies, except as provided in section 2.B.7. For example, an assault with a dangerous weapon committed in Texas that received a 365-day sentence would be given one gross misdemeanor unit due to the sentence length despite being the equivalent by definition of a Minnesota felony second-degree assault.*

2.B.503. *For prior non-Minnesota controlled substance convictions, the amount and type of the controlled substance should be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense.*

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).*

6. Felony Enhancement Due to Prior Misdemeanor or Gross Misdemeanor Convictions.

a. Enhanced Felonies. When the current offense is a felony solely because the offender has previous convictions for misdemeanor and gross misdemeanor offenses, the prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

b. Counting Prior Misdemeanors and Gross Misdemeanors; Future Felony. Except as provided in paragraph c., misdemeanor and gross misdemeanor offenses used to enhance the current offense must be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement must always be used in calculating the offender's criminal history score.

c. Counting Prior Misdemeanors and Gross Misdemeanors; Felony Driving While Impaired (DWI). If the current offense is a felony DWI offense and the offender has a prior felony DWI offense, the prior felony DWI must be used in computing the criminal history score. The prior misdemeanor and gross misdemeanor offenses used to enhance the first prior felony DWI cannot be used in the offender's criminal history. Any other misdemeanor or gross misdemeanor DWI offenses may be included as provided in section 2.B.3.g.

Comment

2.B.601. *A number of instances exist in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior misdemeanor or gross misdemeanor*

offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases, the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than $500 but less than $1,000 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.

2.B.602. *A first-time first-degree (felony) driving while impaired (DWI) offense involves a DWI violation within ten years of the first of three or more prior impaired driving incidents. Because the DWI priors elevated this offense to the felony level, they should be excluded from the criminal history score. Those predicate misdemeanor and gross misdemeanor offenses should also be excluded for a subsequent felony DWI, but any prior felony DWI would be counted as part of the felony criminal history score.*

7. Determining Offense Levels for Prior Offenses.

a. Classification of Prior Offense. The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions (see Minnesota Statutes, section 609.02, subdivisions 2 to 4a) and sentencing policies. Offenses that are petty misdemeanors by statute, or that are certified as or deemed to be petty misdemeanors under Minn. R. Crim. P. 23, must not be used to compute the criminal history score.

b. Monetary Threshold. When a monetary threshold determines the offense classification, the monetary threshold in effect when the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history score.

Comment

2.B.701. *The Commission recognized that the classification of criminal conduct as a felony, gross misdemeanor, misdemeanor, or petty misdemeanor is determined legally by the sentence given rather than the conviction offense.*

2.B.702. *A monetary threshold determines the offense classification when the value of property or services is an element of the offense. Punishment for the offense typically increases as the dollar amount increases.*

2.B.703. *When the offense severity level is determined by a monetary threshold, the threshold in effect when the prior offense was committed determines the offense classification in criminal history. For example, beginning August 1, 2007, the monetary threshold for a felony level Theft of Moveable Property offense under Minnesota Statutes, section 609.52, subdivision 2, paragraph (a), clause (1), was divided between Severity Level 2 and Severity Level 3 by the dollar amount of $5,000. Prior to that, this offense would have been assigned a severity level based on a dollar amount of $2,500. Because this was a change by the Legislature for inflation and no change was made by the Commission to the severity levels, a Theft of Moveable Property offense over $2,500 which previously received a Severity Level of 3 and a weight of 1 point in criminal history would continue to receive that same weight.*

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. Section 3.A governs conditions of stayed sentences.

Each cell on the Grids provides a fixed sentence duration. Minnesota Statutes, section 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 except as provided in section 2.C.3.c(1). 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. 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.

3. Finding the Presumptive Sentence for Certain Offenses.

a. Sex Offenses. Under Minnesota Statutes, section 609.3455, certain sex offenders are subject to mandatory life sentences and certain repeat sex offenders are subject to presumptive executed prison sentences of at least 36 months.

(1) Mandatory Life Sentence. The Sentencing Guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release under subdivision 2 of that statute. For offenders subject to life with the possibility of release under subdivisions 3 and 4 of that statute, the court must specify a minimum term of imprisonment, based on the Sentencing Guidelines presumptive sentence as determined in section 2.C, or any applicable mandatory minimum sentence not contained in Minnesota Statutes, section 609.3455, that must be served before the offender may be considered for release.

(2) Presumptive Executed Prison Sentences of at least 36 Months. Except when a life sentence applies, if the current conviction offense is criminal sexual conduct in the first, second, third, or fourth degree (Minnesota Statutes, sections 609.342 to 609.345) or criminal sexual predatory conduct (Minnesota Statutes, section 609.3453) within 15 years of a previous sex offense conviction, under Minnesota Statutes, section 609.3455, subdivision 10, the presumptive disposition is commitment. The presumptive duration is at least 36 months, or the fixed duration indicated in the appropriate cell on the Grid, whichever is longer.

b. Burglary. If the current conviction offense is burglary of an occupied dwelling (Minnesota Statutes, section 609.582, subdivision 1, clause (a)) and there was a previous conviction for a felony burglary before the current offense occurred, the presumptive disposition is commitment. Prior burglary convictions trigger the presumptive commitment even if they have decayed for criminal history purposes, as set forth in section 2.B.1.c. The presumptive duration for a burglary conviction falling under this section is the fixed duration indicated in the appropriate cell on the Grid.

c. Controlled Substances Offenses.

(1) Certain First-Degree Offenses. If the current conviction is for controlled substance crime in the first degree and the penalty statute is Minnesota Statutes, section 152.021, subdivision 3,

paragraph (c) (related to sale or possession of at least 100 grams or 500 dosage units of certain controlled substances), or if the current conviction is for aggravated controlled substance crime in the first degree, then the lower range, although displayed on the Drug Offender Grid, is excluded from what would otherwise be the presumptive range for that offense.

(2) Subsequent Controlled Substance Convictions. If the current conviction offense is for a controlled substance crime in the first or second degree and is a "subsequent controlled substance conviction" as defined in Minnesota Statutes, section 152.01, subdivision 16a, the presumptive disposition is commitment. Such a conviction triggers the presumptive commitment unless more than ten years have elapsed since discharge from sentence. The presumptive duration for a controlled substance conviction falling under this section is the duration indicated in the appropriate cell on the Drug Offender Grid, or the mandatory minimum, whichever is longer.

d. Driving While Impaired (DWI) Offenses. If the current conviction is for felony DWI and if, prior to the commission of the current offense, the offender had a previous conviction (as conviction is defined in Minnesota Statutes, section 609.02, subdivision 5) for a felony DWI or for a criminal vehicular homicide or operation as defined in Minnesota Statutes, section 169A.24, subdivision 1, clause (3), the presumptive disposition is commitment. Prior felony DWI or criminal vehicular homicide or operation convictions trigger the presumptive commitment even if they have decayed for criminal history purposes as set forth in section 2.B.1.c.

e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, or assault on secure treatment facility personnel is commitment. Pursuant to section 2.F.1, it is presumptive for escape from an executed term of imprisonment and for felony assault committed by an inmate serving an executed term of imprisonment to be sentenced consecutively to the offense for which the inmate was confined. The presumptive duration is determined by the presumptive consecutive sentencing policy (see section 2.F.1, Presumptive Consecutive Sentences).

Comment

2.C.01. *The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for most property offenders. The Commission believes that a rational sentencing policy requires such trade-offs to ensure the availability of correctional resources for the most serious offenders. For the first year of Guidelines' operation, this policy was reflected in sentencing practices. However, by the third year of Guideline operation, the percentage of offenders with criminal history scores of four or more had increased greatly, resulting in a significant increase in imprisonment for property offenses. Given finite resources, increased use of imprisonment for property offenses results in reduced prison resources for person offenses. The allocation of scarce resources has been monitored and evaluated on an ongoing basis by the Commission. The Commission has determined that assigning particular weights to prior felony sentences in computing the criminal history score will address this problem. The significance of low severity level prior felonies is reduced, which should result in a lower imprisonment rate for property offenders. The significance of more serious prior felonies is increased, which should result in increased prison sentences for repeat serious person offenders.*

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.

2.C.03. *The presumptive duration listed on the grid, when executed, includes both the term of imprisonment and the period of supervised release. According to Minnesota Statutes, section 244.101, when the court sentences an offender to an executed sentence for an offense occurring on or after August 1, 1993, the sentence consists of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence; and a specified maximum supervised release term equal to one-third of the total executed sentence. Separate tables following the Grids illustrate how executed sentences are broken down into their two components.*

The Commissioner of Corrections may extend the amount of time an offender actually serves in prison if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender serving the entire executed sentence in prison.

2.C.04. *When a stay of execution is given, the presumptive sentence length shown in the appropriate cell should be pronounced, but its execution stayed. If the sentence length pronounced, but stayed, differs from that shown in the appropriate cell, the sentence is a departure from the Guidelines.*

2.C.05. *When a stay of imposition is given, no sentence length is pronounced, and the imposition of the sentence is stayed to some future date. If that sentence is ever imposed, the presumptive sentence length shown in the appropriate cell should be pronounced, and a decision should be made whether to execute the presumptive sentence length given. If the sentence length pronounced at the imposition of the sentence differs from that shown in the appropriate cell on the applicable Grid, the sentence is a departure from the Guidelines.*

2.C.06. *There are rare instances where the presumptive sentence length exceeds the statutory maximum sentence. If this situation occurs, the statutory maximum sentence becomes the presumptive sentence. For example, Threats of Violence under Minnesota Statutes, section 609.713, subdivision 3, paragraph (a), clause (1) or (2), carries a statutory maximum sentence of 12 months and 1 day. At Severity Level 1, the statutory maximum will be exceeded when the offender reaches a Criminal History Score of 3. As another example, Soliciting Children for Sexual Conduct under Minnesota Statutes, section 609.352, carries a statutory maximum sentence of three years. At Severity Level G, the statutory maximum will be exceeded when the offender reaches a Criminal History Score of 4.*

2.C.07. *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minnesota Statutes, section 609.17 or 609.175, the presumptive sentence duration must be the longer of: (1) the duration for the attempt or conspiracy conviction; or (2) the duration for the next most severe conviction offense.*

2.C.08. *The 2005 Legislature enacted statutory changes allowing life sentences with the possibility of release for certain sex offenders. The statute requires the sentencing court to pronounce a minimum term of imprisonment, based on the Guidelines or any applicable mandatory minimum not contained in Minnesota Statutes, section 609.3455, that the offender must serve before being considered for release. All applicable Guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable to determining the minimum term of imprisonment. See State v. Hodges, 770 N.W.2d 515 (Minn. 2009).*

2.C.09. *Sections 2.C.3.b and 2.C.3.d clarify that the court may consider decayed convictions when determining whether to execute a presumptively stayed sentence. See State v. Jones, 587 N.W.2d 854 (Minn. Ct. App. 1999).*

2.C.10. *Minnesota Statutes, section 152.021, subdivision 3, paragraphs (c) and (d), exclude the lower range, as defined in section 1.B.13.d, from what would otherwise be the presumptive range. While the mandatory-minimum provision of Minnesota Statutes, section 152.021, subdivision 3, paragraph (c), may be waived for an offender sentenced for a first-degree possession crime who had not previously been convicted of controlled substance crime in the first, second, or third degree, a sentence duration that is shorter than the fixed presumptive sentence, even if within the lower range, is nevertheless a mitigated durational departure if Minnesota Statutes, section 152.021, subdivision 3, paragraph (c), applies. Under either subdivision, the presumptive disposition is commitment.*

2.C.11. *The special penalty provisions for subsequent controlled substance convictions do not apply to current offenses of aggravated controlled substance crime in the first degree.*

D. Departures from the Guidelines

1. Departures in General. The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence of the applicable disposition, within the applicable prison range, and within the applicable length of stay, unless there exist identifiable, substantial, and compelling circumstances to support a departure.

The court may depart from the presumptive disposition or duration provided in the Guidelines, and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence. A pronounced sentence for a felony conviction that is outside the appropriate prison range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines. A stayed sentence with a length of stay other than as provided in section 3.A.2 is also a departure from the Guidelines. A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law.

a. Disposition and Duration. Departures with respect to disposition and duration are separate decisions, each requiring written departure reasons. A court may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa.

b. Aggravated Departure. When imposing a sentence that is an aggravated departure, it is recommended that the court pronounce a sentence proportional to the severity of the crime for which the sentence is imposed and the offender's criminal history, and take into consideration the purposes and underlying principles of the Guidelines.

c. Departure Report. In exercising the discretion to depart from a presumptive sentence, the court must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence. The reasons must be stated in the sentencing order or recorded in the departure report and filed with the Commission.

d. Departure Reasons. Because departures are by definition exceptions to the Guidelines, the departure factors in this section are advisory, except as otherwise established by case law.

e. Revoked Stay of Adjudication. When a felony stay of adjudication is vacated and conviction is entered, the Guidelines must be applied. To the extent that the sentenced pronounced immediately following a revocation of a stay of adjudication is contrary to the Guidelines presumptive sentence, that sentence is a departure.

f. Offender's Demand for Execution. A sentence that is executed pursuant to an offender's right to demand execution is not an aggravated dispositional departure.

Comment

2.D.101. *The departure report must be filed with the Commission within 15 days after sentencing. Minn. R. Crim. P. 27.03, subd. 4(C).*

2.D.102. *A defendant has the right to a jury trial to determine whether aggravating factors are proved beyond a reasonable doubt. See e.g., Blakely v. Washington, 542 U.S. 296 (2004); State v. Shattuck, 704 N.W.2d 131 (Minn. 2005); State v. Allen, 706 N.W.2d 40 (Minn. 2005). See also Minn. R. Crim. P. 7.03, 11.04, and 27 (detailing the procedures for seeking an aggravated sentence). If the departure facts are proved beyond a reasonable doubt, the court may exercise its discretion to depart from the presumptive sentence.*

2.D.103. *The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the Guidelines sentence. The purposes of the Guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if courts depart from the Guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.*

2.D.104. *Plea agreements are important to our criminal justice system because it is not possible to support a system where all cases go to trial. However, it is important to have balance in the criminal justice system where plea agreements are recognized as legitimate and necessary and the goals of the Guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to make informed policy decisions or to ensure consistency, proportionality, and rationality in sentencing.*

Departures and their reasons highlight both the success and problems of the existing Guidelines. When a plea agreement involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain its reasons for accepting the negotiation.

2.D.105. *Under Minnesota Statutes, section 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.*

In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of threats of violence (Minnesota Statutes, section 609.713) in statute, so a charge of threats of violence cannot be amended from a felony to a gross misdemeanor.

2.D.106. *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.*

2.D.107. *An offender generally has the right to demand execution of sentence. State v. Rasinski, 472 N.W.2d 645, 651 (Minn. 1991); see also Minnesota Statutes, section 609.135, subdivision 7. The Commission does not regard the execution of a presumptively stayed sentence as a departure from the Guidelines if the record, or the Court's communication to the Commission, reflects that the sentence was executed upon the offender's peremptory demand.*

2. Factors That **Should Not** Be Used As Reasons For Departure. The following factors should not be used as reasons for departure:

a. Race

b. Sex

c. Employment factors, including:

(1) occupation or impact of sentence on profession or occupation;

(2) employment history;

(3) employment at time of offense;

(4) employment at time of sentencing.

d. Social factors, including:

(1) educational attainment;

(2) living arrangements at time of offense or sentencing;

(3) length of residence;

(4) marital status.

e. The defendant's exercise of constitutional rights during the adjudication process.

Comment

2.D.201. *The Commission believes that sentencing should be neutral with respect to an offender's race, sex, and income level. Accordingly, the Commission has listed employment and social factors that should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income level. Employment is excluded as a reason for departure not only because of its correlation with race and income levels, but also because this factor is manipulable - e.g., offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing. While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at time of sentencing. The use of the factors "amenable to probation (or treatment)" or "unamenable to probation" to justify a dispositional departure, could be closely related to social and economic factors. The use of these factors, alone, to explain the reason for departure is insufficient, and the trial court should demonstrate that the departure is not based on any of the excluded factors.*

2.D.202. *The Commission determined that the severity of an offender's sanctions should not vary depending on whether the offender exercised constitutional rights during the adjudication process.*

2.D.203. *It follows from the Commission's use of the conviction offense to determine offense severity that departures from the Guidelines should not be permitted for elements of alleged offender behavior not within the definition of the conviction offense. For example, if an offender is convicted of simple robbery, a departure from the Guidelines to increase the severity of the sentence should not be permitted because the offender possessed a firearm or used another dangerous weapon.*

3. Factors That May Be Used As Reasons For Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

a. Mitigating Factors.

(1) The victim was an aggressor in the incident.

(2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.

(3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.

(4) The offender's presumptive sentence is a commitment but not a mandatory minimum sentence, and either of the following exist:

(a) The current conviction offense is at Severity Level 1 or Severity Level 2 and the offender received all of his or her prior felony sentences during fewer than three separate court appearances; or

(b) The current conviction offense is at Severity Level 3 or Severity Level 4 and the offender received all of his or her prior felony sentences during one court appearance.

(5) Other substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

(6) The court is ordering an alternative placement under Minnesota Statutes, section 609.1055, for an offender with a serious and persistent mental illness.

(7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.

(8) In the case of a controlled substance conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minnesota Statutes, section 152.152.

b. Aggravating Factors.

(1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, and the offender knew or should have known of this vulnerability.

(2) The victim was treated with particular cruelty for which the individual offender should be held responsible.

(3) The current conviction is for a criminal sexual conduct offense, or an offense in which the victim was otherwise injured, and the offender has a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.

(4) The offense was a major economic offense, identified as an illegal act or series of illegal acts committed by other than physical means and by concealment or guile to obtain money or property, to avoid payment or loss of money or property, or to obtain business or professional advantage. The presence of two or more of the circumstances listed below is an aggravating factor with respect to the offense:

(a) the offense involved multiple victims or multiple incidents per victim;

(b) the offense involved an attempted or actual monetary loss substantially greater than the usual offense or substantially greater than the minimum loss specified in the statutes;

(c) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(d) the defendant used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships; or

(e) the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

(5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below is an aggravating factor with respect to the offense:

(a) the offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to sell or transfer;

(b) the offender or an accomplice possessed equipment, drug paraphernalia, or monies evidencing the offense was committed as part of wholesale trafficking of a controlled substance;

(c) the offense involved the manufacture of controlled substances for use by other parties;

(d) the offender or an accomplice knowingly possessed a firearm or other dangerous weapon, as defined by Minnesota Statutes, section 609.02, during the commission of the offense;

(e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement;

(g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional);

(h) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;

(i) the offender has a prior conviction for a crime of violence, as defined in Minnesota Statutes, section 609.1095, subdivision 1, paragraph (d), other than a violation of a provision under Minnesota Statutes, chapter 152, including attempt or conspiracy, or was convicted of a similar offense by the United States or another state;

(j) the offense involved the sale of a controlled substance to a minor or vulnerable adult; and

(k) the defendant, or an accomplice, manufactured, possessed, or sold a controlled substance in a school zone, park zone, public housing zone, federal, state, or local correctional facility, or drug treatment facility.

(6) The offender committed, for hire, a crime against the person.

(7) The offender is being sentenced as an "engrained offender" under Minnesota Statutes, section 609.3455, subdivision 3a.

(8) The offender is being sentenced as a "dangerous offender who commits a third violent crime" under Minnesota Statutes, section 609.1095, subdivision 2.

(9) The offender is being sentenced as a "career offender" under Minnesota Statutes, section 609.1095, subdivision 4.

(10) The offender committed the crime as part of a group of three or more offenders who all actively participated in the crime.

(11) The offender intentionally selected the victim or the property against which the offense was committed, in whole or in part, because of the victim's, the property owner's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.

(12) The offender used another's identity without authorization to commit a crime. This aggravating factor may not be used when use of another's identity is an element of the offense.

(13) The offense was committed in the presence of a child.

(14) The offense was committed in a location in which the victim had an expectation of privacy.

Comment

2.D.301. *The Commission provides a non-exclusive list of factors that may be used as departure reasons. The factors are intended to describe specific situations involving a small number of cases. The Commission rejects factors that are general in nature, and that could apply to large numbers of cases, such as intoxication at the time of the offense. The factors cited are illustrative and are not intended to be an exclusive or exhaustive list. Some of these factors may be considered in establishing conditions of stayed sentences, even though they may not be used as reasons for departure. For example, whether an offender is employed at time of sentencing may be an important factor in deciding whether restitution should be used as a condition of probation, or in deciding the terms of restitution payment.*

2.D.302. *The Commission recognizes that the criminal history score does not differentiate between the crime spree offender who has been convicted of several offenses but has not been previously sanctioned by the criminal justice system, and the repeat offender who continues to commit new crimes despite receiving previous consequences from the criminal justice system. The Commission believes the nonviolent crime spree offender should perhaps be sanctioned in the community at least once or twice before a prison sentence is appropriate. The Commission believes that the court is best able to distinguish these offenders, and can depart from the Guidelines accordingly.*

2.D.303. *The requirement that a defendant be "particularly" amenable to probation ensures that the defendant's amenability to probation distinguishes the defendant from most others and*

truly presents the substantial and compelling circumstances necessary to justify a departure. State v. Soto, 855 N.W.2d 303, 309 (Minn. 2014). While social or economic factors cannot justify a departure, such facts may be relevant to determining whether a defendant is particularly amenable to probation. Id at 312. In determining whether a defendant is particularly suitable to individualized treatment in a probationary setting, for example, a court is permitted to consider the defendant's age, prior record, remorse, cooperation, attitude before the court, and social support. State v. Trog, 323 N.W.2d 28, 31 (Minn. 1982).

2.D.304. *The Commission recognizes that in the medical field the diagnosis "chemically dependent" has been superseded by the diagnosis "substance use disorder, mild, moderate or severe." See the Diagnostic and Statistical Manual of Mental Disorders 5th ed.; (DSM-5); American Psychiatric Association, 2013. Because the chemically dependent diagnosis language remains prevalent in Minnesota Statutes, the Commission has not adopted the new substance use disorder diagnosis language. In the event that the Legislature changes the statutory language, the Commission will take appropriate action.*

2.D.305. *In section 2.D.3.b(3), an aggravated durational departure is permitted when the current conviction is for a criminal sexual conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense. The departure is appropriate even if the prior felony offense had decayed in accordance with section 2.B.1.c. An aggravated durational departure is possible without jury determination of additional facts if victim injury is established in proving the elements of the current offense.*

2.D.306. *Special sentencing provisions were established by the legislature under Minnesota Statutes, sections 609.3455, subdivision 3a, 609.1095, subdivision 2, and 609.1095, subdivision 4, that are available to the courts when sentencing certain sex offenders, "dangerous offenders," and "career offenders." The use of one of these sentencing provisions would constitute a departure under the Guidelines and the court must provide written reasons specifying that the requirements of the statute have been met.*

2.D.307. *The aggravating factor involving groups of three or more offenders under section 2.D.3.b(10) cannot be used when an offender has been convicted under Minnesota Statutes, section 609.229, Crime Committed for Benefit of a Gang. See section 2.G, Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, for the presumptive sentence for offenders convicted of Crime Committed for Benefit of a Gang, Minnesota Statutes, section 609.229, subdivision 3, paragraph (a).*

2.D.308. *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when sentencing an offender for a crime with an increased statutory maximum penalty under Minnesota Statutes, section 609.2233 (felony assault motivated by bias), or for a crime that was elevated to a felony offense because of bias motivation (e.g., Minnesota Statutes, sections 609.2231, subdivision 4 (fourth-degree assault); 609.595, subdivision 1a, paragraph (a) (criminal damage to property); and 609.749, subdivision 3, paragraph (a), clause (1) (harassment)). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

In determining when domestic violence, sexual assault and sexual abuse cases are motivated by a victim's sex and may be appropriately enhanced, proof must be shown of at least one factor, such as: offender makes abusive or derogatory references based on gender; offender states hatred for a gender as a class; crime involves excessive violence, including mutilation; or there are multiple victims of the same gender.

E. Mandatory Sentences

1. In General. When an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded area on the applicable Grid. The presumptive duration of the prison sentence is the mandatory minimum sentence in statute or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. When an offender is sentenced for an attempted offense under Minnesota Statutes, section 609.17, or conspiracy to commit an offense under Minnesota Statutes, section 609.175, and the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer. See Mandatory and Presumptive Sentences Reference Table in Appendix 1.

2. Specific Statutory Provisions. The following mandatory minimum provisions should be imposed as indicated.

a. Second- and Third-Degree Murder. Minnesota Statutes, section 609.107, Mandatory Penalty for Certain Murderers, determines the presumptive sentence for an offender sentenced under that statute.

b. Dangerous Weapon or Firearm. Minnesota Statutes, section 609.11, establishes the mandatory sentence for offenses committed with a dangerous weapon or firearm, or for possession of a firearm by an ineligible felon.

(1) Finding the Mandatory Sentence. Regardless of whether an offender would otherwise receive a presumptive stayed sentence under the Guidelines, the presumptive disposition for an offense subject to a mandatory sentence under Minnesota Statutes, section 609.11, is always commitment. The mandatory duration is established in the statute. See Dangerous Weapons - Minnesota Statutes, section 609.11, Table in Appendix 2.

(2) Departure. Minnesota Statutes, section 609.11, subdivision 8, provides that the court, on its own motion or on the prosecutor's motion, may sentence without regard to the mandatory minimum sentence if the court finds substantial and compelling reasons to do so. Sentencing under subdivision 8 is a departure as follows:

(i) Dispositional Departure. A stay of execution or stay of imposition is a dispositional departure.

(ii) Durational Departure. A sentence other than the mandatory minimum or the presumptive duration or applicable range in the appropriate cell on the applicable Grid, whichever is longer, is a durational departure.

c. Controlled Substance Offenses Involving a Dangerous Weapon. Pursuant to Minnesota Statutes, section 609.11, subdivision 5a, some drug offenses committed with a dangerous weapon may be subject to one of the following two provisions.

(1) Certain Aggravated First-Degree Offenses. If an offender is sentenced for aggravated controlled substance crime in the first degree under Minnesota Statutes, section 152.021, subdivision 2b, clause (2), and is also subject to Minnesota Statutes, section 609.11, subdivision 5a, the presumptive duration is the mandatory minimum sentence described in section 2.C.3.c(1) added to the mandatory minimum sentence for the dangerous weapon involvement found in Minnesota Statutes, section 609.11, subdivision 4 or 5.

(2) Subsequent Controlled Substance Offenses. If an offender is sentenced for a subsequent controlled substance offense and is subject to Minnesota Statutes, section 609.11, subdivision 5a, the presumptive duration is the longer of either:

(i) the mandatory minimum sentence for the subsequent controlled substance offense added to the mandatory minimum sentence for the dangerous weapon involvement; or

(ii) the presumptive duration for the subsequent controlled substance offense provided in the appropriate cell on the Drug Offender Grid and limited, if applicable, by section 2.C.3.c(1).

d. Dangerous and Repeat Felony Offenders. When an offender is sentenced under Minnesota Statutes, section 609.1095, subdivision 3, the presumptive disposition is commitment. The court must impose and execute the presumptive duration unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure.

e. Felony Driving While Impaired (DWI). When the court sentences an offender for first-degree felony driving while impaired, under Minnesota Statutes, section 169A.276, it must impose a sentence of at least 36 months. The court cannot stay imposition or adjudication of the sentence, but may stay execution.

3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

(1) First-degree (felony) driving while impaired. Minnesota Statutes, section 169A.276, subdivision 1, paragraph (d).

(2) Predatory offense registration violation committed by certain offenders. Minnesota Statutes, section 243.166, subdivision 5a.

(3) Assault in the fourth degree against secure treatment facility personnel. Minnesota Statutes, section 609.2231, subdivision 3a, paragraph (d).

(4) First- through fourth-degree criminal sexual conduct and criminal sexual predatory conduct. Minnesota Statutes, section 609.3455, subdivisions 6 to 8.

(5) Use of minors in sexual performance. Minnesota Statutes, section 617.246, subdivision 7.

(6) Child pornography. Minnesota Statutes, section 617.247, subdivision 9.

4. Mandatory Life Sentences. Mandatory life imprisonment sentences for first-degree murder and for sex offenses subject to Minnesota Statutes, section 609.3455, subdivision 2, are not governed by the Guidelines.

Comment

2.E.01. *The Commission attempted to draw the dispositional line so that the great majority of offenses that might involve a mandatory sentence would fall outside the shaded areas of the grids. However, some cases carry a mandatory prison sentence under state law but fall within the shaded areas of the Grids; e.g., Assault in the Second Degree. When that occurs, imprisonment of the offender is the presumptive disposition. The presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell on the applicable Grid, whichever is longer. These crimes are ranked above the dispositional line because the Commission believes the durations at these levels are more proportional to the crime than the durations found at the higher severity levels where prison is recommended regardless of the criminal history score of the offender.*

For example, according to Minnesota Statutes, section 609.11, the mandatory minimum prison sentence for Assault in the Second Degree involving a knife is one year and one day. However, according to the Guidelines, the presumptive duration is the mandatory minimum sentence or the duration provided in the appropriate cell on the Standard Grid, whichever is longer. Therefore, for someone convicted of Assault in the Second Degree with a Criminal History Score of 0, the Guidelines presume a 21 month prison duration based on the appropriate cell on the Standard Grid found at Severity Level 6. The Commission believes this duration is more appropriate than the 48 month prison duration that would be recommended if this crime were ranked at Severity Level 8, which is the first severity level ranked completely above the dispositional line.

2.E.02. *When the mandatory minimum sentence is for less than one year and one day, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition is not commitment unless the case falls above the dispositional line on the applicable Grid. An example is a conviction for a Fifth-Degree Controlled Substance Crime. If the offender has previously been convicted of a controlled substance crime, the mandatory minimum law requires at least six months incarceration, which can be served in a local jail or workhouse.*

2.E.03. *Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies: Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minnesota Statutes, section 152.021, subdivision 2, paragraph (b), clause (1); Controlled Substance Crime in the First or Second Degree with a Firearm under Minnesota Statutes, section 152.021, subdivision 1, clause (2), item (i), or subdivision 2, paragraph (a), clause (2), item (i), or Minnesota Statutes, section 152.022, subdivision 1, clause (2), item (i) or subdivision 2, paragraph (a), clause (2), item (i); Assault in the Second Degree under Minnesota Statutes, sections 609.222; Certain Persons Not to Have Firearms or Ammunition under Minnesota Statutes, section 624.713, subdivision 2, paragraph (b) and 609.165, subdivision 1b; and Drive-By Shootings under Minnesota Statutes, section 609.66. The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer.*

2.E.04. *The mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minnesota Statutes, section 609.11) provides that the finder of fact must determine the firearm or other dangerous weapon use or firearm possession based upon the record of the trial or plea of guilty and does not require the citing of this provision. If the court finds that a dangerous weapon was involved, the mandatory minimum applies under Minnesota Statutes, section 609.11. This provision also provides prosecutors with the authority to make a motion to sentence apart from the mandatory minimum sentence. In State v. Olson, 325 N.W.2d 13 (Minn. 1982), the Supreme Court extended that authority to courts as well. When the prosecutor or court makes a motion to sentence apart from the mandatory minimum, it becomes legal to stay imposition or execution of sentence or to impose a lesser sentence than the mandatory minimum. When this motion is made, the presumptive disposition for the case is still imprisonment, and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer. A stay of imposition or execution for the case constitutes a mitigated dispositional departure. The imposition of a duration less than the mandatory minimum or cell time, if the latter is longer, constitutes a mitigated durational departure. Written reasons specifying the substantial and compelling nature of the circumstances and demonstrating why the sentence selected is more appropriate, reasonable or equitable than the presumptive sentence are required.*

2.E.05. *Minnesota Statutes, section 609.11, subdivision 5a, applies to aggravated controlled substance crime in the first degree only if the offender is convicted under Minnesota Statutes, section 152.021, subdivision 2b, clause (2), and the crime was committed with a firearm or other dangerous weapon. Example: An offender with a Criminal History Score of 3 possessed 100 grams of cocaine. Because two of the aggravating factors listed in Minnesota Statutes, section 152.01, subdivision 24, were present, the offender is convicted of aggravated controlled substance crime in the first degree under Minnesota Statutes, section 152.021, subdivision 2b, clause (2). It is also proven that the offender was in possession of a firearm, although the firearm possession was not an element of the crime. The mandatory minimum sentence would be 158 months, calculated as follows:*

122 months Mand. Min. (section 2.C.3.c(1); severity level D9, Criminal History Score of 3)

+ 36 months Mand. Min. for weapon (Minnesota Statutes, section 609.11, subdivision 5, paragraph (a))

= 158 months

Minnesota Statutes, section 609.11, subdivision 5a, does not apply to Minnesota Statutes, section 152.021, subdivision 2b, clause (1), which, by definition, involves the use or possession of a firearm.

2.E.06*. Minnesota Statutes, section 609.11, subdivision 5a, states that for a subsequent controlled substance offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the Drug Offender Grid for the subsequent controlled substance offense; the presumptive duration is the longer of the two. For example: A second-degree drug offender with a Criminal History Score of 2 is convicted of a subsequent controlled substance offense and was in possession of a firearm.*

Mandatory Minimums: *36 months Mand. Min. (Minnesota Statutes, section 152.022, subdivision 3, paragraph (b))*

+ 36 months Mand. Min. (Minnesota Statutes, section 609.11, subdivision 5, paragraph (a))

= 72 months

vs.

Grid Cell: *= 68 months (Severity Level D7; Criminal History Score of 2)*

F. Concurrent/Consecutive Sentences

Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.

This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure.When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.

If two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate supervised release period.

If a sentence is executed consecutively to an earlier executed sentence (executed at an earlier time or by a different court), and the offender has not yet been placed on supervised release for the earlier executed sentence, the Commissioner of Corrections must aggregate both terms of imprisonment into a single, fixed term of imprisonment. The offender will serve the longer of the two supervised release terms.

If a sentence is executed consecutively to an earlier executed sentence after the supervised release date for the earlier sentence, any remaining supervised release term from the earlier executed sentence is tolled while the offender serves the consecutive term of imprisonment. The offender will serve what remains of the previously tolled supervised release term or the supervised release term for the consecutive sentence, whichever is longer.

Comment

2.F.01. *Consecutive sentences are a more severe sanction because the intent is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses.*

The Commission recommends that the court consider carefully whether the purposes of the Guidelines (in terms of punishment proportional to the severity of the offense and the offender's criminal history) would be served best by concurrent rather than consecutive sentences.

2.F.02. *When a sentence is executed consecutively to another executed sentence on the same day and before the same court, the Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third supervised release terms are aggregated and served consecutively as well.*

For example, if a court executes a 60-month fixed sentence, and, at the same time, executes a 21-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections must aggregate the 40-month and 14-month terms of imprisonment into a single 54-month fixed term of imprisonment, and must aggregate the supervised release terms of 20 months and 7 months into a single 27-month fixed term of supervised release to be served consecutively, as illustrated below:

1st: 40-mo. term of imprisonment		*1st: 20-mo. supervised release term*	
	2nd: 14-mo. term of imp.		2nd: 7-mo. s.r.t.
= 54-mo. aggregate term of imprisonment		***= 27-mo. agg. sup. rel. term***	

2.F.03. *When two sentences are executed on different days or before different courts, the second sentence is consecutive to the first, and the offender has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated. The first supervised release term will not run during the aggregate term of imprisonment, but the supervised release terms will run at the same time as each other.*

For example, Judge A sentences an offender to a 60-month executed sentence. Judge B later sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. Neither of the offender's two supervised release terms will begin until the offender has completed the term of imprisonment (including disciplinary confinement) for both offenses. When the supervised

release terms do begin, they will not be aggregated, as they would have been if the consecutive sentences were executed by the same judge at the same time. Instead, the longer supervised term release will effectively control the duration, and they will run simultaneously, as illustrated below:

1st: 40-mo. term of imprisonment		*1st: 20-mo. supervised release term*	
	2nd: 14-mo. term of imp.	*2nd: 7-mo. s.r.t.*	
= 54-mo. aggregate term of imprisonment		***= 20-mo. s.r.t.***	

2.F.04. *When an offender has already been placed on supervised release by the time the second, consecutive sentence is executed, the terms of imprisonment cannot be aggregated. In such a case, the first supervised release term stops running during the second term of imprisonment. When the offender is placed on supervised release for the consecutive sentence, the first supervised release term will resume; the offender will serve the remaining balance on the first supervised release term and the second supervised release term at the same time.*

For example, Judge A sentences an offender to a 60-month executed sentence. The offender serves a 40-month term of imprisonment and is placed on supervised release for 20 months. Five months after being placed on supervised release, Judge B sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. During the ensuing 14-month term of imprisonment (and any disciplinary confinement thereafter), the first sentence's supervised release term is tolled. Upon release, the offender will serve the remaining balance of the original supervised release term (now 15 months) simultaneous to the service of the consecutive sentence's supervised release term. The longer supervised release term will effectively control the duration, as illustrated below:

20-month supervised release term			
1st: 40-mo. term of imprisonment	*5 mo.*	*(tolled sup. release)*	*15 mo. sup. release*
		2nd: 14-mo. term of imp.	*7-mo. s.r.t.*
= 40-mo. term of imprisonment	***=5***	***= 14-mo. t.i.***	***= 15-mo. s.r.t.***

1. Presumptive Consecutive Sentences.

a. Criteria for Imposing a Presumptive Consecutive Sentence. Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender was, at the time of the current offense:

(i) serving an executed term of imprisonment, disciplinary confinement, or reimprisonment; or

(ii) on escape status from an executed term of imprisonment, disciplinary confinement, or reimprisonment; and

(2) the presumptive disposition for the current offense(s) is commitment.

b. Finding the Presumptive Disposition. The presumptive disposition is determined using the criteria in section 2.C. The presumptive disposition for an escape from an executed sentence

or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.

c. Finding the Presumptive Duration. For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.

d. Exception When Presumptive Concurrent Sentence is Longer. If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.

e. Consecutive Sentences for Multiple Offenses. When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense. Permissive consecutive sentencing under section 2.F.2 is not a departure if it would result in a longer sentence than the sentence resulting from this rule.

f. Departure Factor. If there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.

g. Felony Driving While Impaired (DWI). Minnesota Statutes, section 169A.28, subdivision 1, requires a consecutive sentence when the court sentences an offender for a felony DWI and:

(1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and

(2) the disposition for the current offense will be probation; **but not**

(3) when the disposition for the current offense will be commitment.

If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense.

Comment

2.F.101. *This section establishes criteria requiring the use of consecutive sentences under the Guidelines. These are called "presumptive consecutive sentences." When consecutive sentencing is presumptive, it is a departure to give concurrent sentences.*

2.F.102. *When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense.*

For example, an offender is convicted of Escape from Custody and First-Degree Burglary of an Occupied Dwelling following escape from an executed term of imprisonment. The term of imprisonment remaining on the original offense from which the offender escaped is 18 months. Each of the new offenses will have a presumptive consecutive sentence duration found at a Criminal History Score of 1: Escape from Custody (Severity Level 3), 13 months; Burglary (Severity Level 6), 27 months. The two sentences will run concurrently to each other, and the longer of the two durations will be added to the time remaining on the original term of imprisonment (here, 27 months will be added to the time remaining on the original 18-month sentence). Aggregated, the new presumptive consecutive sentence duration is 45 months.

2.F.103. *A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an inmate with a Criminal History Score of 6 assaults a prison guard during his term of imprisonment and has only one month remaining until his supervised release term is scheduled to begin. The Guidelines would typically recommend that the assault run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.*

1 month (before scheduled supervised release date)

+ 12 months and 1 day (Severity Level 1; Criminal History Score of 1)

= 13 months and 1 day, consecutive

vs.

19 months, concurrent (Severity Level 1; Criminal History Score of 6)

2.F.104. *If the offense is an attempt under Minnesota Statutes, section 609.17, or a conspiracy under Minnesota Statutes, section 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2.*

2. Permissive Consecutive Sentences.

a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section.

(1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment, as outlined in section 2.C, and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

(i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be sentenced consecutively to a prior felony sentence that has not expired or been discharged if the prior felony conviction:

(a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or

(b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.

The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C. A non-Minnesota conviction is equivalent to a crime on the list in section 6 if it would both be defined as a felony in Minnesota, and received a sentence that in Minnesota would be a felony-level sentence, including the equivalent of a stay of imposition.

(ii) Multiple Current Felony Convictions. If the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences in section 6, the convictions may be sentenced consecutively to each other.

(iii) Felony Conviction After Escape (Non-Executed Sentence). If the offender commits and is convicted for a new felony crime while on felony escape from lawful custody - as defined

in Minnesota Statutes, section 609.485 - from a non-executed felony sentence, the new felony conviction may be sentenced consecutively to the sentence for the escape or the offense for which the offender was confined.

(2) Other Offenses. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.

(i) Felony Escape. If the offender is convicted of felony escape from lawful custody - as defined in Minnesota Statutes, section 609.485 - and the offender did not escape from an executed term of imprisonment, disciplinary confinement, or reimprisonment (see section 2.F.1.a(1)(ii)), the escape may be sentenced consecutively to the sentence for which the offender was confined.

(ii) Felony Conviction After Escape (Executed Sentence). If the offender committed and is convicted for a new felony crime committed while on felony escape from lawful custody - as defined in Minnesota Statutes, section 609.485 - from an executed felony sentence, the new felony may be sentenced consecutively to the sentence for the escape.

(iii) Fleeing a Police Officer; Criminal Sexual Conduct. The court may impose consecutive sentences as permitted under Minnesota Statutes, section 609.035, subdivisions 5 and 6, if both of the following occur:

(a) the offender is convicted of either of the following offenses:

(1) Fleeing a Peace Officer in a Motor Vehicle, as defined in Minnesota Statutes, section 609.487; or

(2) Criminal Sexual Conduct in the First through Fourth Degrees with force or violence, as defined in Minnesota Statutes, sections 609.342 through 609.345; and

(b) the court imposes punishment for any other crime committed by the defendant as part of the same conduct.

(iv) Felony Assault in a Local Jail or Workhouse. If the offender is convicted of felony assault committed while in a local jail or workhouse, the felony assault conviction may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment as outlined in section 2.C.

b. Finding the Presumptive Duration. For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.

Comment

2.F.201. *The Commission establishes criteria that permits, but does not require, the use of consecutive sentences in instances listed in the Guidelines. This is called "permissive consecutive sentences."*

2.F.202. *If an offender is given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by using the zero criminal history column, or the mandatory minimum, whichever is longer. The purpose of this procedure is to count an offender's criminal history score only one time in the computation of consecutive sentence durations.*

2.F.203. *If the offense is an attempt under Minnesota Statutes, section 609.17, or a conspiracy under Minnesota Statutes, section 609.175, and the court pronounces a permissive consecutive*

sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, in the case of an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half - making the presumptive sentence 24 months.

2.F.204. *The Commission's policies on permissive consecutive sentences outline the criteria that are necessary to permit consecutive sentences without the requirement to cite reasons for departure. Courts may pronounce consecutive sentences in any other situation by citing reasons for departure. Courts may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in section 2.D.*

2.F.205. *Consecutive sentences are permissive for multiple current felony convictions even when the offenses involve one victim and a single course of conduct, but only when the presumptive disposition is commitment. However, consecutive sentencing is not permissive for multiple current felony convictions involving one victim and a single course of conduct if the court is giving an upward durational departure on any of the current conviction offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.*

2.F.206. *An offender given a consecutive sentence for a crime committed while using or possessing metal-penetrating bullets under Minnesota Statutes, section 624.7191, subdivision 3, can get up to the three-year statutory maximum without departing from the Guidelines. The length of the consecutive sentence is left to the discretion of the court. For example, an offender with a Criminal History Score of 0 is sentenced to a presumptive 48 months prison for aggravated robbery in the first degree, and next is sentenced to 36 months prison consecutively for possessing metal-penetrating bullets.*

3. Crime Committed for the Benefit of a Gang. When the court imposes a presumptive or permissive consecutive sentence for a crime committed for the benefit of a gang under Minnesota Statutes, section 609.229, subdivision 3, the presumptive duration includes additional months as outlined in section 2.G.

4. Pre-Guidelines Cases. If a sentence is imposed consecutively to an offense committed before May 1, 1980, the consecutive sentence begins after completion of any incarceration arising from the prior sentence.

Comment

2.F.401. *The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for offenders sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for offenders revoked and re-imprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.*

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from

the prior sentence" means the target release date the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980, or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole for the pre-Guidelines offense.

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

1. In General. Sentence modifiers are statutes or policies that aid in defining the punishment for the underlying offense. Modifiers can affect either or both the duration and the disposition of the presumptive sentence. Any change to the presumptive fixed sentence under this section must also be applied to the upper and lower ends of the range found in the appropriate cell on the applicable Grid, except that the presumptive sentence cannot be less than one year and one day, nor can it be less than any applicable mandatory minimum.

2. Attempt or Conspiracy. When an offender is sentenced for an attempted offense under Minnesota Statutes, section 609.17, or for conspiracy to commit an offense under Minnesota Statutes, section 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense. When the underlying offense has a mandatory minimum sentence of a year and a day or more, the presumptive duration is the mandatory minimum sentence in statute or one-half the duration found in the appropriate cell on the applicable Grid, whichever is longer.

3. Solicitation of Juveniles or Mentally Impaired Persons. When an offender is sentenced for soliciting a juvenile under Minnesota Statutes, section 609.494, subdivision 2, paragraph (b), or for soliciting a mentally impaired person under Minnesota Statutes, section 609.493, subdivision 2, paragraph (b), the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense.

4. Conspiracy to Commit a Controlled Substance Offense. The modifying statute for Conspiracy to Commit a Controlled Substance offense under Minnesota Statutes, section 152.096, does not affect the presumptive sentence for the underlying offense.

5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree. The Commission regards the provisions in Minnesota Statutes, sections 609.342, subdivision 2, paragraph (b), and 609.343, subdivision 2, paragraph (b), as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minnesota Statutes, section 609.342 or Criminal Sexual Conduct in the Second Degree under Minnesota Statutes, section 609.343, subdivision 1, paragraphs (c), (d), (e), (f), and (h), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

6. Taking Responsibility for Criminal Acts. When an offender is sentenced for taking responsibility for criminal acts under Minnesota Statutes, section 609.495, subdivision 4, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense.

7. Offense Committed in Furtherance of Terrorism. When an offender is sentenced for an offense committed in the furtherance of terrorism under Minnesota Statutes, section 609.714, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by fifty percent.

8. Criminal Sexual Predatory Conduct. When an offender is sentenced for criminal sexual predatory conduct under Minnesota Statutes, section 609.3453, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by:

a. twenty-five percent; or

b. fifty percent, if the violation was committed by an offender with a "previous sex offense conviction" as defined in Minnesota Statutes, section 609.3455, subdivision 1.

9. Solicitation or Promotion of Prostitution; Sex Trafficking. When an offender is sentenced for Solicitation or Promotion of Prostitution or Sex Trafficking under Minnesota Statutes, section 609.322, subdivision 1, paragraph (b), the presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

a. 48 months, if the underlying crime was completed; or

b. 24 months, if the underlying crime was an attempt or conspiracy.

10. Offense Committed for the Benefit of a Gang. When an offender is sentenced for an offense committed for the benefit of a gang under Minnesota Statutes, section 609.229, subdivision 3, paragraph (a):

a. Pursuant to Minnesota Statutes, section 609.229, subdivision 4, the presumptive disposition is always commitment; and

b. The presumptive duration is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender's criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

(1) If the offense does not involve a victim or if the victim was eighteen or older:

(i) 12 months, if the underlying offense was completed; or

(ii) 6 months, if the underlying offense was an attempt under Minnesota Statutes, section 609.17, or conspiracy under Minnesota Statutes, section 609.175; or

(2) If the offense involves a victim under the age of eighteen:

(i) 24 months, if the underlying offense was completed; or

(ii) 12 months, if the underlying offense was an attempt under Minnesota Statutes, section 609.17, or conspiracy under Minnesota Statutes, section 609.175.

11. Felony Assault Motivated by Bias. When an offender is sentenced for a crime for which the maximum penalty has been increased under Minnesota Statutes, section 609.2233, the presumptive duration found in the appropriate cell on the applicable Grid for the underlying offense must be increased by twenty-five percent.

12. Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction). When an offender is sentenced for a criminal vehicular homicide under Minnesota Statutes, section 609.2112, subdivision 1, paragraph (b) (death, qualified prior conviction), or Minnesota Statutes, section 609.2114, subdivision 1, paragraph (b) (death to an unborn child, qualified prior conviction), the presumptive duration found in the appropriate cell on the Standard Grid for the offense must be increased by fifty percent.

13. Attempt or Conspiracy to Commit First-Degree Murder. When an offender is sentenced for attempt or conspiracy to commit murder in the first degree under Minnesota Statutes, section 609.185, or murder of an unborn child in the first degree under Minnesota Statutes, section 609.2661, the presumptive disposition is commitment.

The presumptive durations are as follows:

	CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE	0	1	2	3	4	5	6 or More
Conspiracy/Attempted Murder, 1st Degree	180 *153-216*	190 *162-228*	200 *170-240*	210 *179-240*[1]	220 *187-240*[1]	230 *196-240*[1]	240 *204-240*[1]

[1] Minnesota Statutes, section 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.

14. Second or Subsequent Severe Violent Offense.

a. The following definitions apply to this section:

(1) A "severe violent offense" is an offense listed in section 8, Severe Violent Offense List. "Severe violent offense" includes attempt or conspiracy, and includes an equivalent felony from a jurisdiction other than Minnesota, as outlined in section 2.B.5 (Convictions from Jurisdictions other than Minnesota). A current offense is not a "severe violent offense" if section 2.E.4 (Mandatory Life Sentences) applies.

(2) "Second or subsequent severe violent offense" means that prior to the commission of current severe violent offense, the offender has been adjudicated guilty of one or more severe violent offense.

(3) A "prior severe violent offense conviction" is an adjudication that qualifies the current offense as a second or subsequent severe violent offense. A conviction for an offense excluded from criminal history score computation under section 2.B.1.c (Felony Decay Factor) does not qualify as a "prior severe violent offense conviction." A conviction that resulted in a non-felony sentence (see section 2.B.1.h) does not qualify as a "prior severe violent offense conviction" if the non-felony sentence was imposed before the current offense date.

b. If the current offense is a second or subsequent severe violent offense, the presumptive fixed sentence for the current offense, as determined in section 2.C, shall increase by the number of months corresponding, in the following table, to the number of prior severe violent offense convictions, provided that:

(1) If the current severe violent offense is an attempt under Minnesota Statutes, section 609.17, or conspiracy under Minnesota Statutes, section 609.175, the increase shall be one-half the number of months stated; and

(2) This section shall not apply to a presumptive or permissive consecutive sentence pursuant to section 2.F.

NUMBER OF PRIOR SEVERE VIOLENT OFFENSE CONVICTIONS	MONTHS
1	12

2	18
3 or more	24

Comment

2.G.01. *If the presumptive sentence is an odd number, division by two produces a presumptive sentence involving a half month. For example, 41 months divided by two equals 20.5 months. In that case, 20.5 months is the presumptive sentence length.*

2.G.02. *A modifier that reduces the duration of the presumptive sentence does not alter a presumptive disposition of commitment. For example, the presumptive sentence for completed simple robbery at a Criminal History Score of 3 is commitment for 33 months; the presumptive sentence for attempt is commitment for 16.5 months. Although 16.5 months appears to be in the shaded area on the Standard Grid, the presumptive disposition is still commitment.*

2.G.03. *While the Commission recognizes the enhanced punishments available in the existing dangerous offender law (Minnesota Statutes, section 609.1095, subdivisions 2 and 3), it is also aware of the limited scope of those provisions, which, in practice, rarely result in enhanced sentences. It views the establishment of an automatic sentence modifier applicable to second or subsequent severe violent offenses as being necessary to protect the public from crime and thereby to promote public safety. The term "second or subsequent severe violent offense" incorporates the statutory term "second or subsequent offense" (Minnesota Statutes, section 609.02, subdivision 11).*

3. RELATED POLICIES

A. Establishing Conditions of Stayed Sentences

1. Method of Granting Stayed Sentences. When the court orders a stayed sentence, the court may pronounce a stay of execution or a stay of imposition. The court must pronounce the length of the stay as provided in section 3.A.2 and may establish appropriate conditions subject to the considerations in section 3.A.3.

a. Stay of Execution. When ordering a stay of execution, the court must pronounce the prison sentence duration, but its execution is stayed. The presumptive duration is shown in the appropriate cell.

b. Stay of Imposition. When ordering a stay of imposition, the court must not pronounce a prison sentence duration, and the imposition of the sentence is stayed.

The Commission recommends that stays of imposition be used for offenders who are convicted of lower severity offenses and who have low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

Comment

3.A.101. *The use of either a stay of imposition or stay of execution is at the discretion of the court. The Commission has provided a non-presumptive recommendation regarding which categories of offenders should receive stays of imposition, and has recommended that convicted felons generally should receive only one stay of imposition. The Commission believes that stays of imposition are a less severe sanction, and should be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, courts use stays of imposition most frequently for these types of offenders.*

2. Length of Stay. While the Commission has chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

b. Subject to the limitation in section 3.A.2.a, the pronounced length of stay may exceed the presumptive prison sentence duration provided in the appropriate cell on the applicable Grid.

c. If the court by departure exceeds the limitation in section 3.A.2.a, the length of stay must not exceed the statutory maximum punishment for the offense.

d. The limitation in section 3.A.2.a does not apply to a sentence for a violation of Minnesota Statutes, section 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 609.2662 (Murder of an Unborn Child 2nd Degree), 609.2663 (Murder of an Unborn Child 3rd Degree), 609.2664 (Manslaughter of an Unborn Child 1st Degree), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 609.342 (Criminal Sexual Conduct 1st Degree), 609.343 (Criminal Sexual Conduct 2nd Degree), 609.344 (Criminal Sexual Conduct 3rd Degree), 609.345 (Criminal Sexual Conduct 4th Degree), or 609.3451 (Criminal Sexual Conduct 5th Degree).

e. Extensions of probation are governed by statute (see Minnesota Statutes, section 609.135, subdivision 2, paragraphs (g) and (h)).

Comment

3.A.201. *When a court grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell on the applicable Grid, and may be as long as the statutory maximum punishment for the conviction offense. See Minnesota Statutes, section 609.135, subdivision 2. Absent substantial and compelling reasons to depart, however, the length of the stay may not exceed five years, unless the current offense is a homicide or criminal sexual conduct offense, including an attempt or conspiracy. Thus, for an offender convicted of Theft, over $5,000 (Severity Level 3), with a Criminal History Score of 1, the duration of the stay could be up to five years – or, upon a finding of substantial and compelling reasons to depart, up to ten years. Regardless of the length of stay, the 13-month sentence shown in the Guidelines is the presumptive sentence length and, if imposed, would be executed if: (a) the court departs from the dispositional recommendation and decides to execute the sentence; or (b) the stay is later revoked and the court decides to imprison the offender.*

3.A.202. *Before section 3.A.2.a took effect, case law required durational departures to be based on the nature of the offense rather than on the individual characteristics of the offender. See State v. Solberg, 882 N.W.2d 618, 625 (Minn. 2016). Although a pronounced length of stay longer than provided in section 3.A.2 is defined as an aggravated durational departure, the Commission recognizes that judicial considerations for pronouncing a longer-than-recommended length of stay may differ substantially from considerations for imposing a longer-than-recommended prison duration. As a result of these differences, the individual characteristics of the offender may be relevant to the district court's finding of substantial and compelling reasons justifying a longer-than-recommended length of stay.*

3.A.203. *Within section 3.A.2, "statutory maximum punishment" refers to the applicable maximum period for a stay of sentence established in statute. For most felonies, this is the maximum period*

for which the sentence of imprisonment might have been imposed, but, for some felonies, this is four or six years. Minnesota Statutes, section 609.135, subdivision 2, paragraphs (a) and (b).

3. Other Conditions of Stayed Sentences. While the Commission has otherwise chosen not to develop specific guidelines for the conditions of stayed sentences, it recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including:

(1) deterrence;

(2) public condemnation of criminal conduct;

(3) public safety;

(4) rehabilitation;

(5) restitution;

(6) retribution; and

(7) risk reduction.

The Commission also recognizes that the relative importance of these objectives may vary with both offense and offender characteristics and that multiple objectives may be present in any given sentence. The Commission urges courts to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. The Commission further urges courts to consider the following principles in establishing the conditions of stayed sentences:

(1) Retribution. If retribution is an important objective of the stayed sentence, the severity of the retributive sanction should be proportional to the severity of the offense and the prior criminal record of the offender. A period of confinement in a local jail or correctional facility may be appropriate.

(2) Rehabilitation. If rehabilitation is an important objective of the stayed sentence, the court should make full use of available local programs and resources. The absence of a rehabilitative resource, in general, should not be a basis for enhancing the retributive objective in sentencing and, in particular, should not be the basis for more extensive use of incarceration than is justified on other grounds.

(3) Restitution. The Commission urges courts to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for offenders with short criminal histories who are convicted of property crimes, although the use of these conditions in other cases may be appropriate.

(4) Supervision. Supervised probation should be a primary condition of stayed sentences.

(5) Fines. If fines are imposed, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

(6) Work Release and Community Based Programs. The Commission has chosen not to establish specific guidelines relating to work release programs in local facilities or community-based residential and nonresidential programs.

Comment

3.A.301. *The court may attach any conditions to a stayed sentence that are permitted by law and that the court deems appropriate. The Guidelines neither enlarge nor restrict the conditions that courts may attach to a stayed sentence. Minnesota Statutes, section 244.09, subdivision 5,*

permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission has developed such guidelines with respect to the pronounced length of stay in section 3.A.2, and has provided additional, general direction in the use of conditions of stayed sentences in the above section.

3.A.302. *While the Commission has otherwise not developed guidelines for nonimprisonment sanctions, the Commission believes it is important for the sentencing courts to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minnesota Statutes, section 609.135, subdivision 7, which states when an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive Guidelines duration.*

B. Revocation of Stayed Sentences

The Commission views a revocation of a stayed sentence and commitment to be justified when:

(1) the offender is convicted of a new felony for which the Guidelines recommend prison; or

(2) the offender continues to violate conditions of the stay despite the court's use of expanded and more onerous conditions.

The decision to revoke an offender's stayed sentence should not be undertaken lightly. Great restraint should be exercised in imprisoning offenders who were originally convicted of low severity level offenses or who have short prior criminal histories. For these offenders, the Commission urges continuance of the stay and use of more restrictive and onerous conditions, such as periods of local confinement. Less judicial tolerance is urged for offenders who were convicted of a more severe offense or who had a longer criminal history. For both groups of offenders, however, the court should not reflexively order imprisonment for non-criminal violations of probationary conditions.

Comment

3.B.01. *The Guidelines are based on the concept that the severity of the sanction is proportional to the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions.*

C. Jail Credit

1. In General. In order to promote the goals of the Sentencing Guidelines, it is important to ensure that jail credit is consistently applied. The court must assure that the record accurately reflects all time spent in custody - including examinations under Minn. R. Crim. P. 20 or 27.03, subd 1(B) - for the offense or behavioral incident for which the offender is sentenced. Minnesota Statutes, Rules of Criminal Procedure, relevant court decisions, and these Guidelines determine how jail credit is applied.

2. Applying Jail Credit. To uphold the proportionality of sentencing, jail credit should be applied in the following manner:

a. The Commissioner of Corrections must deduct jail credit from the sentence imposed by subtracting the time from the specified minimum term of imprisonment. If there is any remaining time, it must be subtracted from the specified maximum period of supervised release.

b. To avoid double credit when applying jail credit to consecutive sentences, the court must apply the jail credit to the first sentence only.

c. To avoid creating a concurrent sentence when a current offense is sentenced consecutively to a prior offense for which the offender is already serving time in a prison or jail, the court must not apply jail credit from the prior offense to the current offense.

d. When a stayed sentence is revoked and the offender is committed, jail credit must reflect time spent in confinement as a condition of the stayed sentence.

e. Jail credit must be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minnesota Statutes, section 631.425).

Comment

3.C.01. *Jail credit is governed by statute and rule - see, e.g., Minnesota Statutes, section 609.145, and Minn. R. Crim. P. 27.03, subd 4(b) - and a great deal of case law. Granting jail credit to the time served in custody in connection with an offense ensures that a defendant who cannot post bail because of indigency will serve the same amount of time that an offender in identical circumstances who is able to post bail would serve. Also, the total amount of time a defendant is incarcerated should not turn on irrelevant concerns such as whether the defendant pleads guilty or insists on his right to trial.*

3.C.02. *Determining the appropriate application of jail credit for an individual can be very complicated, particularly when multiple offenses are involved. While the Commission recognizes the difficulty in interpreting individual circumstances, it believes that the court should award jail credit so that it does not turn on matters that are subject to the manipulation by the prosecutor.*

3.C.03. *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. 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, 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.*

3.C.04. *Credit for time spent in custody as a condition of a stay of imposition or stay of execution is appropriate for time spent in jails, workhouses, and regional correctional facilities. The Commission takes no position on the applicability of jail credit for time spent in other residential facilities, electronic monitoring, etc., and leaves it to the sentencing authority to determine whether jail credit should be granted in these situations.*

3.C.05. *In computing jail time credit, each day or portion of a day in jail should be counted as one full day of credit. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day.*

3.C.06. *The Commission's policy is that sentencing should be neutral with respect to the economic status of felons. In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody must be computed by the Commissioner of Corrections and subtracted from the*

specified minimum term of imprisonment. If there is any remaining jail credit left over, it should be subtracted from the specified maximum period of supervised release. If credit for time spent in custody were immediately deducted from the sentence instead, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond.

3.C.07. *For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody must be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

D. Juveniles

The Guidelines apply when determining:

(1) the appropriate sentence for a juvenile certified as an adult under Minnesota Statutes, section 260B.125; or

(2) the stayed adult sentence pronounced as part of the disposition imposed for a juvenile convicted as an extended jurisdiction juvenile under Minnesota Statutes, section 260B.130.

E. Presentence Mental or Physical Examinations for Sex Offenders

The Commission recommends that, under Minn. R. Crim. P. 27.03, subd 1(B)(1)(b), the court order a physical or mental examination of the offender as a supplement to the presentence investigation required by Minnesota Statutes, section 609.115, when:

(1) an offender has been convicted under Minnesota Statutes, section 609.342 (first-degree criminal sexual conduct), 609.343 (second-degree criminal sexual conduct), 609.344 (third-degree criminal sexual conduct), 609.345 (fourth-degree criminal sexual conduct), or 609.365 (incest); or

(2) an offender is convicted under Minnesota Statutes, section 609.17, of an attempt to commit an act proscribed by Minnesota Statutes, section 609.342 (first-degree criminal sexual conduct) or 609.344 (third-degree criminal sexual conduct.)

F. Military Veterans

Under Minnesota Statutes, section 609.115, subdivision 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision.

G. Modifications

1. Policy Modifications. Modifications to sections 1 through 8 of the Minnesota Sentencing Guidelines, and associated commentary and appendices, apply to offenders whose date of offense is on or after the specified modification effective date.

2. Clarifications of Existing Policy. Modifications to commentary and appendices relating to existing Guidelines policy apply to offenders sentenced on or after the specified effective date.

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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE 0	1	2	3	4	5	6 or more
Murder, 2nd Degree (Intentional; Drive-By-Shootings)	11	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
Murder, 2nd Degree (Unintentional) Murder, 3rd Degree (Depraved Mind)	10	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Murder, 3rd Degree (Controlled Substances) Assault, 1st Degree	9	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Agg. Robbery, 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)	8	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI; Financial Exploitation of a Vulnerable Adult	7	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[2,3]
Assault, 2nd Degree; Burglary, 1st Degree (Occupied Dwelling)	6	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary Simple Robbery	5	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	4	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	3	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Theft Crimes ($5,000 or less) Check Forgery ($251-$2,500)	2	12[1]	12[1]	13	15	17	19	21 *18-25*
Assault, 4th Degree Fleeing a Peace Officer	1	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

[1] 12[1]=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 Minnesota Statutes, section 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.

[2] Minnesota Statutes, section 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

[3] 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.)

Examples of Executed Sentences (Length in Months) Broken Down by: Term of Imprisonment and Supervised Release Term

Under Minnesota Statutes, section 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a

disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	78	52	26
13	8 2/3	4 1/3	86	57 1/3	28 2/3
15	10	5	88	58 2/3	29 1/3
17	11 1/3	5 2/3	98	65 1/3	32 2/3
18	12	6	108	72	36
19	12 2/3	6 1/3	110	73 1/3	36 2/3
21	14	7	122	81 1/3	40 2/3
23	15 1/3	7 2/3	134	89 1/3	44 2/3
24	16	8	146	97 1/3	48 2/3
27	18	9	150	100	50
28	18 2/3	9 1/3	158	105 1/3	52 2/3
30	20	10	165	110	55
33	22	11	180	120	60
36	24	12	190	126 2/3	63 1/3
38	25 1/3	12 2/3	195	130	65
39	26	13	200	133 1/3	66 2/3
42	28	14	210	140	70
43	28 2/3	14 1/3	220	146 2/3	73 1/3
45	30	15	225	150	75
48	32	16	230	153 1/3	76 2/3
51	34	17	240	160	80
54	36	18	306	204	102
57	38	19	326	217 1/3	108 2/3
58	38 2/3	19 1/3	346	230 2/3	115 1/3
60	40	20	366	244	122
66	44	22	386	257 1/3	128 2/3
68	45 1/3	22 2/3	406	270 2/3	135 1/3
72	48	24	426	284	142

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 (Example offenses listed in italics)		**0**	**1**	**2**	**3**	**4**	**5**	**6 or More**
Crimincal Sexual Conduct (CSC) 1st Degree	**A**	144 *144-172*	156 *144-187*	168 *144-201*	180 *153-216*	234 *199-280*	306 *261-360*	360 *306-360*[2]
CSC 2nd Degree-1(c)(d)(e)(f)(h) (e.g., contact, force, & injury)	**B**	90 *90*[3]*-108*	110 *94-132*	130 *111-156*	150 *128-180*	195 *166-234*	255 *217-300*	300 *255-300*[2]
CSC 3rd Degree-1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., penetration & force/occupation)	**C**	48 *41-57*	62 *53-74*	76 *65-91*	90 *77-108*	117 *100-140*	153 *131-180*	180 *153-180*[2]
CSC 2nd Degree-1(a)(b)(g) (e.g., contact & victim under 13) *CSC 3rd Degree-1(a)(e)(f) or 1(b) with 2(1) (e.g., penetration & child victim)*	**D**	36	48	60 *51-72*	70 *60-84*	91 *78-109*	119 *102-142*	140 *119-168*
CSC 4th Degree-1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) (e.g., contact & force/occupation) *Dissemination of Child Pornography*[2]	**E**	24	36	48	60 *51-72*	78 *67-93*	102 *87-120*	120 *102-120*[2]
CSC 4th Degree-1(a)(b)(e)(f) (e.g., contact & child victim) *CSC 5th Degree;* *Possession of Child Pornography (Subseq./ Pred. Off./ Under 13)*	**F**	18	27	36	45 *39-54*	59 *51-70*	77 *66-92*	84 *72-100*
CSC 3rd Degree-1(b) with 2(2) (i.e., penetration & child victim 24-48 months younger) *Possession of Child Pornography;* *Solicit Child for Sexual Conduct*[2]	**G**	15	20	25	30	39 *34-46*	51 *44-60*	60 *51-60*[2]
Failure to Register as a Predatory Offender	**H**	12[1] *12*[1]*-14*	14 *12*[1]*-16*	16 *14-19*	18 *16-21*	24 *21-28*	30 *26-36*	36 *31-43*

[1] 12[1]=One year and one day

□ Presumptive commitment to state imprisonment. Sex offenses under Minnesota Statutes, section 609.3455, subdivision 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E., 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 Minnesota Statutes, section 609.3455, subdivision 4. See sections 2.C. and 2.E.

[2] Minnesota Statutes. section 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.

[3] Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree 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.)

Examples of Executed Sentences (Length in Months) Broken Down by: Term of Imprisonment and Supervised Release Term

Under Minnesota Statutes, section 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	84	56	28
14	9 1/3	4 2/3	90	60	30
15	10	5	91	60 2/3	30 1/3
16	10 2/3	5 1/3	102	68	34
18	12	6	110	73 1/3	36 2/3
20	13 1/3	6 2/3	117	78	39
24	16	8	119	79 1/3	39 2/3
25	16 2/3	8 1/3	120	80	40
27	18	9	130	86 2/3	43 1/3
30	20	10	140	93 1/3	46 2/3
36	24	12	144	96	48
39	26	13	150	100	50
40	26 2/3	13 1/3	153	102	51
45	30	15	156	104	52
48	32	16	168	112	56
51	34	17	180	120	60
59	39 1/3	19 2/3	195	130	65
60	40	20	234	156	78
62	41 1/3	20 2/3	255	170	85
70	46 2/3	23 1/3	300	200	100
76	50 2/3	25 1/3	306	204	102
77	51 1/3	25 2/3	360	240	120

78	52	26			

4.C. Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or More**
Aggravated Controlled Substance Crime, 1st Degree *Manufacture of Any Amt. Meth*	**D9**	86 *74*-103*	98 *84*-117*	110 *94*-132*	122 *104*-146*	134 *114*-160*	146 *125*-175*	158 *135*-189*
Controlled Substance Crime, 1st Degree	**D8**	65 *56*-78*	75 *64*-90*	85 *73*-102*	95 *81*-114*	105 *90*-126*	115 *98*-138*	125 *107*-150*
Controlled Substance Crime, 2nd Degree	**D7**	48	58	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Controlled Substance Crime, 3rd Degree *Failure to Affix Stamp*	**D6**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Possess Substances with Intent to Manufacture Meth	**D5**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Controlled Substance Crime, 4th Degree	**D4**	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Meth Crimes Involving Children and Vulnerable Adults	**D3**	12[1]	13	15	17	19 *17-22*	21 *18-25*	23 *20-27*
Controlled Substance Crime, 5th Degree	**D2**	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	**D1**	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

*Lower range may not apply. See section 2.C.3.c(1) and Minnesota Statutes, section 152.021, subdivision 3, paragraphs (c) and (d)

[1] 12[1] = One year and one day

☐ Presumptive commitment to state imprisonment.

■ 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.

Examples of Executed Sentences (Length in Months) Broken Down by: Term of Imprisonment and Supervised Release Term

Under Minnesota Statutes, section 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary

rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

Executed Sentence	Term of Imprisonment	Supervised Release Term	Executed Sentence	Term of Imprisonment	Supervised Release Term
12 and 1 day	8 and 1 day	4	58	38 2/3	19 1/3
13	8 2/3	4 1/3	65	43 1/3	21 2/3
15	10	5	68	45 1/3	22 2/3
17	11 1/3	5 2/3	75	50	25
18	12	6	78	52	26
19	12 2/3	6 1/3	85	56 2/3	28 1/3
21	14	7	86	57 1/3	28 2/3
23	15 1/3	7 2/3	88	58 2/3	29 1/3
24	16	8	95	63 1/3	31 2/3
27	18	9	98	65 1/3	32 2/3
28	18 2/3	9 1/3	105	70	35
30	20	10	108	72	36
33	22	11	110	73 1/3	36 2/3
38	25 1/3	12 2/3	115	76 2/3	38 1/3
39	26	13	122	81 1/3	40 2/3
43	28 2/3	14 1/3	125	83 1/3	41 2/3
45	30	15	134	89 1/3	44 2/3
48	32	16	146	97 1/3	48 2/3
51	34	17	158	105 1/3	52 2/3
57	38	19			

5.A. Offense Severity Reference Table

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

Severity Level	Offense Title	Statute Number
11	Adulteration	609.687, subd. 3(1)
	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings)	609.19, subd. 1
	Murder of an Unborn Child 2nd Degree	609.2662(1)

10	Fleeing a Peace Officer (Death)	609.487, subd. 4(a)
	Murder 2nd Degree (Unintentional Murder)	609.19, subd. 2
	Murder of an Unborn Child 2nd Degree	609.2662(2)
	Murder 3rd Degree	609.195(a)
	Murder of an Unborn Child 3rd Degree	609.2663
9	Assault 1st Degree	609.221
	Assault of an Unborn Child 1st Degree	609.267
	Criminal Abuse of Vulnerable Adult (Death)	609.2325, subd. 3(a)(1)
	Death of an Unborn Child in the Commission of Crime	609.268, subd. 1
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(a)
	Kidnapping (Great Bodily Harm)	609.25, subd. 2(2)
	Manslaughter 1st Degree	609.20(1), (2) & (5)
	Manslaughter of an Unborn Child 1st Degree	609.2664(1) & (2)
	Murder 3rd Degree	609.195(b)
	Tampering with Witness, Aggravated 1st Degree	609.498, subd. 1b
8	Aggravated Robbery 1st Degree	609.245, subd. 1
	Arson 1st Degree	609.561
	Burglary 1st Degree (w/Weapon or Assault)	609.582, 1(b) & (c)
	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	609.2325, subd. 3(a)(2)
	Criminal Vehicular Homicide (Death)	609.2112, subd. 1(a)
	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	609.2112, subd. 1(b)
	Criminal Vehicular Operation (Death to an Unborn Child)	609.2114, subd. 1(a)
	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	609.2114, subd. 1(b)
	Deprivation of Vulnerable Adult (Great Bodily Harm)	609.233, subd. 3(1)
	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, subd. 1e(b)
	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	609.78, subd. 2a
	Escape with Violence from Felony Offense	609.485, subd. 4(b)

	Great Bodily Harm Caused by Distribution of Drugs	609.228
	Identity Theft	609.527, subd. 3(5)
	Kidnapping (Not in Safe Place or Victim Under 16)	609.25, subd. 2(2)
	Malicious Punishment of Child (Great Bodily Harm)	609.377, subd. 6
	Manslaughter 1st Degree	609.20(3) & (4)
	Manslaughter of an Unborn Child 1st Degree	609.2664(3)
	Manslaughter 2nd Degree - Culpable Negligence	609.205(1) & (5)
	Manslaughter of an Unborn Child 2nd Degree	609.2665(1)
	Riot 1st Degree	609.71, subd. 1
	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)	609.5641, subd. 1a(c)
7	Financial Exploitation of a Vulnerable Adult (Over $35,000)	609.2335
	Felony Driving While Impaired 1st Degree	169A.24
	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)	609.5641, subd. 1a(b)
6	Aggravated Robbery 2nd Degree	609.245, subd. 2
	Assault 2nd Degree	609.222
	Burglary 1st Degree (Occupied Dwelling)	609.582, subd. 1(a)
	Certain Persons Not to Have Firearms or Ammunition	624.713, subd. 1(b); 609.165, subd. 1b
	Discharge of Firearm at Occupied Transit Vehicle/Facility	609.855, subd. 5
	Explosive Device or Incendiary Device	609.668, subd. 6
	Fleeing Peace Officer (Great Bodily Harm)	609.487, subd. 4(b)
	Kidnapping (Safe Release/No Great Bodily Harm)	609.25, subd. 2(1)
	Medical Assistance Fraud (Over $35,000)	609.466
	Offering Counterfeit Currency (Over $35,000)	609.632, subd. 3 with subd. 4(b)(1)
	Price Fixing/Collusive Bidding	325D.53, subd. 1(2)(a)

	Theft Over $35,000	609.52, subd. 2(a)(3), (4), (15), (16), & (19) with 609.52, subd. 3(1)
5	Arson 2nd Degree	609.562
	Burglary 2nd Degree	609.582, subd. 2(a)(1) & (2), 2(b)
	Check Forgery (Over $35,000)	609.631, subd. 4(1)
	Child Neglect/Endangerment	609.378
	Criminal Vehicular Operation (Great Bodily Harm)	609.2113, subd. 1
	Criminal Vehicular Operation (Injury to an Unborn Child)	609.2114, subd. 2
	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	609.233, subd. 3(2)
	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	609.78, subd. 2b(2)
	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(b)
	Financial Exploitation of a Vulnerable Adult (Over $5,000)	609.2335
	Financial Transaction Card Fraud (Over $35,000)	609.821, subd. 3(a)(1)(i)
	Harassment (3rd or Subsequent Violations)	609.749, subd. 4(b)
	Interference with Emergency Communications	609.776
	Manslaughter 2nd Degree - Hunting Accident	609.205(2), (3), & (4)
	Manslaughter of an Unborn Child 2nd Degree	609.2665(2), (3), & (4)
	Negligent Discharge of Explosive	299F.83
	Perjury	609.48, subd. 4(1)
	Possession or Use (Unauthorized) of Explosives	299F.79; 299F.80, subd. 1; 299F.82, subd. 1
	Price Fixing/Collusive Bidding	325D.53, subd. 1(1), and subd. 1(2)(b) & (c)
	Simple Robbery	609.24
	Stalking	609.749, subd. 5
	Tampering with Witness in the First Degree	609.498, subd. 1a
	Wildfire Arson (Demonstrable Bodily Harm)	609.5641, subd. 1a(d)
4	Adulteration	609.687, subd. 3(2)

Assault of an Unborn Child 2nd Degree	609.2671
Assault 3rd Degree	609.223, subd. 1, 2, & 3
Assault 5th Degree (3rd or Subsequent Violation)	609.224, subd. 4
Bribery	609.42; 90.41; 609.86
Bribery, Advancing Money, and Treating	211B.13
Bring Contraband into State Prison	243.55
Bring Dangerous Weapon into County Jail	641.165, subd. 2(b)
Burglary 2nd Degree (Pharmacy/Tool)	609.582, subd. 2(a)(3) & (4)
Burglary 3rd Degree (Non Residential)	609.582, subd. 3
Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	609.2325, subd. 3(a)(3)
Dangerous Weapons on School Property	609.66, subd. 1d(a)
Domestic Assault	609.2242, subd. 4
Domestic Assault by Strangulation	609.2247
Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	609.78, subd. 2b(1)
False Imprisonment (Substantial Bodily Harm)	609.255, subd. 3(c)
Financial Exploitation of a Vulnerable Adult ($5,000 or Less)	609.2335
Fleeing a Peace Officer (Substantial Bodily Harm)	609.487, subd. 4(c)
Harassment (Aggravated Violations)	609.749, subd. 3(a), (b)
Harassment (2nd Violation)	609.749, subd. 4(a)
Injury of an Unborn Child in Commission of Crime	609.268, subd. 2
Interference with a Dead Body or Scene of Death	609.502, subd. 1(1)
Malicious Punishment of Child (2nd or Subsequent Violation)	609.377, subd. 3
Malicious Punishment of Child (Bodily Harm)	609.377, subd. 4
Malicious Punishment of Child (Substantial Bodily Harm)	609.377, subd. 5
Negligent Fires (Great Bodily Harm)	609.576, subd. 1(1)
Perjury	609.48, subd. 4(2)
Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (2nd or Subsequent Violation)	609.526
Receiving Stolen Property (Firearm)	609.53

	Security Violations (Over $2,500)	80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
	Sports Bookmaking	609.76, subd. 2
	Threats of Violence (Terror/Evacuation)	609.713, subd. 1
	Theft From Person	609.52
	Theft of Controlled Substances	609.52, subd. 3(2)
	Theft of Firearm	609.52, subd. 3(1)
	Theft of Incendiary Device	609.52, subd. 3(2)
	Theft of Motor Vehicle	609.52, subd. 2(a)(1)
	Use of Drugs to Injure or Facilitate Crime	609.235
	Violation of a Domestic Abuse No Contact Order	629.75, subd. 2(d)
	Violation of an Order for Protection	518B.01, subd. 14(d)
	Violation of Harassment Restraining Order	609.748, subd. 6(d)
	Weapon in Courthouse or Certain State Buildings	609.66, subd. 1g
3	Arson 3rd Degree	609.563
	Bringing Stolen Goods into State (Over $5,000)	609.525
	Check Forgery (Over $2,500)	609.631, subd. 4(2)
	Coercion (Threat Bodily Harm)	609.27, subd. 1(1)
	Coercion (Prop. Value $2,500 or More)	609.27, subd. 1(2), (3), (4), (5), & (6)
	Computer Damage (Over $2,500)	609.88
	Computer Theft (Over $2,500)	609.89
	Criminal Vehicular Operation (Substantial Bodily Harm)	609.2113, subd. 2
	Damage or Theft to Energy Transmission, Telecommunications	609.593
	Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)	609.595, subd. 1(1) & (2)
	Damages; Illegal Molestation of Human Remains; Burials; Cemeteries	307.08, subd. 2(a)
	Dangerous Smoking	609.576, subd. 2
	Dangerous Trespass, Railroad Tracks	609.85(1)
	Dangerous Weapons/Certain Persons Not to Have Firearms or Ammunition	609.67, subd. 2; 624.713, subd. 1(a)

Depriving Another of Custodial or Parental Rights	609.26, subd. 6(a)(2)
Disarming a Peace Officer	609.504
Drive-By Shooting (Unoccupied Motor Vehicle or Building)	609.66, subd. 1e(a)
Embezzlement of Public Funds (Over $2,500)	609.54
Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(c)
Escape from Civil Commitment, Sexually Dangerous Persons	609.485, subd. 4(a)(5)
Escape from Electronic Monitoring	609.485, subd. 4(f)
Escape from Felony Offense	609.485, subd. 4(a)(1)
False Imprisonment (Demonstrable Bodily Harm)	609.255, subd. 3(b)
False Imprisonment (Restraint)	609.255, subd. 2
False Traffic Signal	609.851, subd. 2
Financial Transaction Card Fraud (Over $2,500)	609.821, subd. 2(1), (2), (5), (6), (7), & (8)
Firearm Suppressor (Public Housing, School, or Park Zone)	609.66, subd. 1a(a)(1)
Gambling Taxes	297E.13, subd. 1-4
Hinder Logging (Great Bodily Harm)	609.591, subd. 3(1)
Identity Theft	609.527, subd. 3(4)
Insurance Tax	297I.90, subd. 1& 2
Intentional Release of Harmful Substance	624.732, subd. 2
Medical Assistance Fraud (Over $5,000)	609.466
Motor Vehicle Use Without Consent	609.52, subd. 2(a)(17)
Nonconsensual Dissemination of Private Sexual Images	617.261, subd. 2(b)
Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew	609.50, subd. 2
Offering Counterfeit Currency ($5,001-$35,000)	609.632, subd. 3 with subd. 4(b)(2)
Possession of Burglary Tools	609.59
Possession of Code Grabbing Devices	609.586, subd. 2
Possession of Shoplifting Gear	609.521
Possession or Sale of Stolen or Counterfeit Check	609.528, subd. 3(4)
Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods ($1,000 or More)	609.526, subd. 2(1)

	Receiving Stolen Goods (Over $5,000)	609.53
	Rustling and Livestock Theft (Over $2,500)	609.551
	Security Violations ($2,500 or Less)	80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
	Tampering with Fire Alarm System (Results in Bodily Harm)	609.686, subd. 2
	Tax Evasion Laws	289A.63
	Tear Gas & Tear Gas Compounds; Electronic Incapacitation Devices	624.731, subd. 8(a)
	Telecommunications and Information Services; Obtaining Services By Fraud (Over $2,500)	609.893, subd. 1
	Theft Crimes - Over $5,000	*See section 7: Theft Offense List*
	Theft of Controlled Substances	609.52, subd. 3(3)(b)
	Theft of Public Records	609.52
	Theft of Trade Secret	609.52, subd. 2(a)(8)
	Unauthorized Presence at Camp Ripley	609.396, subd. 2
2	Accidents (Death)	169.09, subd. 14(a)(1)
	Aggravated Forgery (Misc. Non-Check)	609.625; 609.635; 609.64
	Bribery of Participant or Official in Contest	609.825, subd. 2
	Bringing Stolen Goods into State ($1,001 - $5,000)	609.525
	Bringing Stolen Goods into State ($501 - $1,000, w/Previous Conviction)	609.525
	Cellular Counterfeiting 1st Degree	609.894, subd. 4
	Check Forgery ($251 - $2,500)	609.631, subd. 4(3)(a)
	Coercion (Prop. Value $301 - $2,500)	609.27, subd. 1(2), (3), (4), (5), & (6)
	Computer Damage ($2,500 or Less)	609.88
	Computer Theft ($2,500 or Less)	609.89
	Counterfeited Intellectual Property	609.895, subd. 3(a)
	Damage to Property (Service to Public, Over $1,000, Over $500 and Subsequent)	609.595, subd. 1(3), (4) & (5)
	Discharge of Firearm (Intentional)	609.66, subd. 1a(a)(2)
	Discharge of Firearm (Public Housing, School, or Park Zone)	609.66, subd. 1a(a)(2) & (3)

Dishonored Check (Over $500)	609.535, subd. 2a(a)(1)
Duty to Render Aid (Death or Great Bodily Harm)	609.662, subd. 2(b)(1)
Electronic Use of False Pretense to Obtain Identity	609.527, subd. 5a
Embezzlement of Public Funds ($2,500 or Less)	609.54
Failure to Control a Regulated Animal, Resulting in Great Bodily Harm or Death	346.155, subd. 10(e)
Financial Transaction Card Fraud ($2,500 or Less)	609.821, subd. 2(1), (2), (5), (6), (7), & (8)
Firearm Suppressor	609.66, subd. 1a(a)(1)
Furnishing a Dangerous Weapon	609.66, subd. 1c
Furnishing Firearm to Minor	609.66, subd. 1b
Gambling Regulations	349.2127, subd. 1-6; 349.22, subd. 4
Identity Theft	609.527, subd. 3(3)
Impersonating a Peace Officer	609.4751, subd. 3
Mail Theft	609.529
Medical Assistance Fraud ($5,000 or Less)	609.466
Negligent Fires (Damage $2,500 or More)	609.576, subd. 1(3)(iii)
Offering Counterfeit Currency ($5,000 or Less)	609.632, subd. 3 with subd. 4(b)(3)
Possession or Sale of Stolen or Counterfeit Check	609.528, subd. 3(3)
Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (Less than $1,000)	609.526, subd. 2(2)
Precious Metal Dealers, Regulatory Provisions	325F.743
Receiving Stolen Goods ($5,000 or Less)	609.53
Residential Mortgage Fraud	609.822
Riot 2nd Degree	609.71, subd. 2
Rustling and Livestock Theft ($2,500 or Less)	609.551
Telecommunications and Information Services; Obtaining Services by Fraud ($2,500 or Less)	609.893, subd. 1
Telecommunications and Information Services; Facilitation of Telecommunications Fraud	609.893, subd. 2
Threats of Violence (Bomb Threat)	609.713, subd. 2
Theft Crimes - $5,000 or Less	See section 7: Theft Offense List

	Theft (Looting)	609.52
	Theft ($1,000 or Less; Risk of Bodily Harm)	609.52, subd. 3a(1)
	Transfer Pistol to Ineligible Person	624.7141, subd. 2
	Transfer Pistol to Minor	624.7132, subd. 15(b)
	Unauthorized Computer Access (Electronic Terminal)	609.891, subd. 2(c)
	Unlawful Possession or Use of Scanning Device or Reencoder	609.527, subd. 5b
	Wildfire Arson	609.5641, subd. 1a(a)
1	Accidents (Great Bodily Harm)	169.09, subd. 14(a)(2)
	Altering Livestock Certificate	35.824
	Assault 4th Degree	609.2231, subds. 1, 2, 3, & 3a
	Assault Weapon in Public if Under 21	624.7181, subd. 2
	Assaulting or Harming a Police Horse	609.597, subd. 3(3)
	Assault 4th Degree Motivated by Bias	609.2231, subd. 4(b)
	Aiding Offender to Avoid Arrest	609.495, subd. 1
	Bullet-Resistant Vest During Commission of Crime	609.486
	Cable Communication Systems Interference	609.80, subd. 2
	Cellular Counterfeiting 2nd Degree	609.894, subd. 3
	Certification for Title on Watercraft	86B.865, subd. 1
	Check Forgery ($250 or Less)	609.631, subd. 4(3)(b)
	Counterfeited Intellectual Property	609.895, subd. 3(b)
	Crime Committed for Benefit of Gang	609.229, subd. 3(c)
	Criminal Damage to Property Motivated by Bias	609.595, subd. 1a(a)
	Criminal Use of Real Property (Movie Pirating)	609.896
	Depriving Another of Custodial or Parental Rights	609.26, subd. 6(a)(1)
	Discharge of Firearm (Reckless)	609.66, subd. 1a(a)(3)
	Discharge of Firearm at Unoccupied Transit Vehicle/Facility	609.855, subd. 5
	Duty to Render Aid (Substantial Bodily Harm)	609.662, subd. 2(b)(2)
	Escape from Civil Commitment	609.485, subd. 4(a)(4)
	Escape, Mental Illness	609.485, subd. 4(a)(2)

Failure to Appear in Court	609.49; 588.20, subd. 1
False Bill of Lading	228.45; 228.47; 228.49; 228.50; 228.51
False Certification by Notary Public	609.65(1)
False Declaration	256.984
False Information - Certificate of Title Application	168A.30, subd. 1
Financial Transaction Card Fraud	609.821, subd. 2(3) & (4)
Fleeing a Peace Officer	609.487, subd. 3
Forgery	609.63
Forgery Related Crimes	*See Forgery Related Offense List*
Fraudulent Drivers' Licenses and Identification Cards	609.652
Fraudulent Instrument or Entry for Procuring a Certificate of Title	508.80
Fraudulent Statements	609.645
Insurance Regulations	62A.41
Interference with Privacy (Subsequent Violations & Minor Victim)	609.746, subd. 1(e)
Interference with Transit Operator	609.855, subd. 2(c)(1)
Leaving State to Evade Establishment of Paternity	609.31
Liquor Taxation (Criminal Penalties)	297G.19, subds. 3, 4(c), 5(c)
Lottery Fraud	609.651, subd. 1 with subd. 4(a)
Nonsupport of Spouse or Child	609.375, subd. 2a
Pistol without a Permit (Subsequent Violations)	624.714, subd. 1a
Prize Notices and Solicitations	325F.755, subd. 7
Prostitution Crimes (Gross Misdemeanor Level) Committed in School or Park Zones	609.3242, subd. 2(2)
Remove or Alter Serial Number on Firearm	609.667
Tampering with a Fire Alarm (Potential for Bodily Harm)	609.686, subd. 2
Tax on Petroleum and Other Fuels (Willful Evasion)	296A.23, subd. 2
Threats of Violence (Replica Firearm)	609.713, subd. 3(a)
Theft from Abandoned or Vacant Building ($1,000 or Less)	609.52, subd. 3(3)(d)(iii)

	Unlawful Acts Involving Liquor	340A.701
	Voting Violations	Chapters 201, 203B, & 204C
UNRANKED	Abortion	617.20; 617.22; 145.412
	Accomplice After the Fact	609.495, subd. 3
	Adulteration	609.687, subd. 3(3)
	Aiding Suicide	609.215
	Altering Engrossed Bill	3.191
	Animal Fighting	343.31, subd. 1(a)
	Assaulting or Harming a Police Horse	609.597, subd. 3(1) & (2)
	Bigamy	609.355
	Cigarette Tax and Regulation Violations	297F.20
	Collusive Bidding/Price Fixing	325D.53, subds. 1(3), 2, & 3
	Computer Encryption	609.8912
	Concealing Criminal Proceeds; Engaging in Business	609.496; 609.497
	Corporate Political Contribution Violations	211B.15
	Corrupting Legislator	609.425
	Counterfeiting of Currency (Manufacturing or Printing/Means for False Reproduction)	609.632, subd. 1 & 2 with subd. 4(a)
	Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines	609.594
	Escape with Violence from Gross Misdemeanor or Misdemeanor Offense	609.485, subd. 4(a)(3)
	Failure to Report	626.556, subd. 6
	Falsely Impersonating Another	609.83
	Female Genital Mutilation	609.2245
	Forced Execution of a Declaration	145B.105
	Fraudulent or Improper Financing Statements	609.7475
	Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction)	609.76, subd. 3, 4, 5, 6, & 7
	Hazardous Wastes	609.671
	Horse Racing - Prohibited Act	240.25

Incest	609.365
Insurance Fraud - Employment of Runners	609.612
Interstate Compact Violation	243.161
Issuing a Receipt for Goods One Does Not Have	227.50
Issuing a Second Receipt Without "Duplicate" on It	227.52
Killing or Harming a Public Safety Dog	609.596, subd. 1
Labor Trafficking	609.282
Lawful Gambling Fraud	609.763
Metal Penetrating Bullets	624.7191
Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws	116C.835
Misprision of Treason	609.39
Motor Vehicle Excise Tax	297B.10
Obscene Materials; Distribution	617.241, subd. 4
Obstructing Military Forces	609.395
Pipeline Safety	299J
Police Radios During Commission of Crime	609.856
Racketeering, Criminal Penalties (RICO)	609.904
Real and Simulated Weapons of Mass Destruction	609.712
Refusal to Assist	6.53
Sale of Membership Camping Contracts	82A.13; 82A.25
Service Animal Providing Service	343.21, subd. 9(f) (h)
State Lottery Fraud	609.651, subd. 1 with 4(b) and subd. 2 & 3
Subdivided Land Fraud	83.43
Torture or Cruelty to Pet or Companion Animal	343.21, subd. 9(c) (d) (g) (i)
Treason	609.385
Unauthorized Computer Access (Grave Risk or Subsequent)	609.891, subd. 2(a) & (b)
Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	609.283
Unlawful Transfers or Sales of Recordings	325E.201

	Warning Subject of Investigation	609.4971
	Warning Subject of Surveillance or Search	609.4975
	Wire Communications Violations	626A.02, subd. 4; 626A.03, subd. 1(b)-(ii); 626A.26, subd. 2(1)(ii)
A	Criminal Sexual Conduct 1st Degree	609.342
B	Criminal Sexual Conduct 2nd Degree	609.343, subd. 1(c) (d) (e) (f) (h)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
D	Criminal Sexual Conduct 2nd Degree	609.343, subd. 1(a) (b) (g)
	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(a) (e) (f) or subd. 1(b) with ref. to subd. 2(1)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	617.246, subd. 2(b), 3(b), 4(b)
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p)
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
F	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(a) (b) (e) (f)

	Criminal Sexual Conduct 5th Degree	609.3451, subd. 3
	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	609.344, subd. 1(b) with ref. to subd. 2(2)
	Indecent Exposure	617.23, subd. 3
	Possession of Child Pornography	617.247, subd. 4(a)
	Solicitation of Children to Engage in Sexual Conduct	609.352, subd. 2
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a
	Surreptitious Observation Device (Minor Victim and Sexual Intent)	609.746, subd. 1(f)
H	Failure to Register as a Predatory Offender	243.166, subd. 5(b) (c)
D9	Aggravated Controlled Substance Crime 1st Degree	152.021, subd. 2b
	Importing Controlled Substances Across State Borders	152.0261
	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a
D8	Controlled Substance Crime 1st Degree	152.021, subd. 1 or 2
D7	Controlled Substance Crime 2nd Degree	152.022
D6	Controlled Substance Crime 3rd Degree	152.023
	Failure to Affix Stamp on Cocaine	297D.09, subd. 1
	Failure to Affix Stamp on Hallucinogens or PCP	297D.09, subd. 1
	Failure to Affix Stamp on Heroin	297D.09, subd. 1
	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	256D.09, subd. 1
D5	Possession of Substances with Intent to Manufacture Methamphetamine	152.0262

D4	Controlled Substance Crime 4th Degree	152.024
D3	Anhydrous Ammonia (Tamper/Theft/Transport)	152.136
	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
D2	Controlled Substance Crime 5th Degree	152.025, subd. 4(b)
	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
	Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4
	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
D1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	297D.09, subd. 1
	Failure to Affix Stamp on Schedule IV Substances	297D.09, subd. 1
	Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
	Medical Cannabis Violations (Diversion by patient, Registered Designated Caregiver, or Parent)	152.33, subd. 2
	Sale of Simulated Controlled Substance	152.097

5.B. Severity Level By Statutory Citation

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

Statute Number	Offense Title	Severity Level
3.191	Altering Engrossed Bill	Unranked
6.53	Refusal to Assist	Unranked
35.824	Altering Livestock Certificate	1
62A.41	Insurance Regulations	1
80A.68 or 80B.10, subd. 1 or 80C.16, subd. 3(a)(b)	Securities Violation (Over $2,500)	4
80A.68 or 80B.10, subd. 1 or 80C.16, subd. 3(a)(b)	Securities Violation ($2,500 or Less)	3
82A.13 or 82A.25	Sale of Membership Camping Contracts	Unranked

83.43	Subdivided Land Fraud	Unranked
86B.865, subd. 1	Certification for Title on Watercraft	1
90.41, subd. 1	Bribery (State Appraiser and Scaler)	4
116C.835	Midwest Interstate Low-Level Radioactive Waste Compact; Enforcement of Compact and Laws	Unranked
145.412	Abortion	Unranked
145B.105	Forced Execution of a Declaration	Unranked
152.021, subd. 1 or 2	Controlled Substance Crime 1st Degree	D8
152.021, subd. 2a	Manufacture any Amount of Methamphetamine	D9
152.021, subd. 2b	Aggravated Controlled Substance Crime 1st Degree	D9
152.022	Controlled Substance Crime 2nd Degree	D7*
152.023	Controlled Substance Crime 3rd Degree	D6
152.024	Controlled Substance Crime 4th Degree	D4
152.025, subd. 4(b)	Controlled Substance Crime 5th Degree	D2
152.0261	Importing Controlled Substances Across State Borders	D9
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	D5
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	D2
152.097	Sale of Simulated Controlled Substance	D1
152.136	Anhydrous Ammonia (Tamper/Theft/Transport)	D3
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	D3
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	D1
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	D1
152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	D2
168A.30, subd. 1	False Information - Certificate of Title Application	1
169.09, subd. 14(a)(1)	Accidents (Death)	2
169.09, subd. 14(a)(2)	Accidents (Great Bodily Harm)	1
169A.24	Felony Driving While Impaired 1st Degree	7*
176.178	Workers Compensation Fraud (Over $5,000)	3
176.178	Workers Compensation Fraud ($5,000 or Less)	2
201, 203B,	Voting Violations	1

204C (Chapters)

211B.13	Bribery, Advancing Money, and Treating Prohibited	4
211B.15	Corporate Political Contribution Violations	Unranked
227.50	Issuing a Receipt for Goods One Does Not Have	Unranked
227.52	Issuing a Second Receipt without "Duplicate" on it	Unranked
228.45; 228.47; 228.49; 228.50; 228.51	False Bill of Lading	1
240.25	Horse Racing (Prohibited Act)	Unranked
243.161	Interstate Compact Violation	Unranked
243.166, subd. 5(b)	Registration of Predatory Offenders	H
243.166, subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent Violations)	H
243.55	Bringing Contraband into State Prison	4
256.98	Welfare Fraud (Over $5,000)	3
256.98	Welfare Fraud ($5,000 or Less)	2
256.984	False Declaration	1
268.182	Unemployment Benefit Fraud (Over $5,000)	3
268.182	Unemployment Benefit Fraud ($5,000 or Less)	2
289A.63	Tax Evasion Laws	3
296A.23, subd. 2	Tax on Petroleum and Other Fuels (Willful Evasion)	1
297B.10	Motor Vehicle Excise Tax	Unranked
297D.09, subd. 1	Failure to Affix Stamp on Cocaine	D6
297D.09, subd. 1	Failure to Affix Stamp on Hallucinogens or PCP (Angel Dust), Incl. LSD	D6
297D.09, subd. 1	Failure to Affix Stamp on Heroin	D6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I and II Narcotics	D6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	D2
297D.09, subd. 1	Failure to Affix Stamp on Marijuana/Hashish/ Tetrahydrocannabinols	D1
297D.09, subd. 1	Failure to Affix Stamp on Schedule IV Substance	D1
297E.13, subd. 1-4	Gambling Taxes	3
297F.20	Cigarette Tax and Regulation Violations	Unranked

297G.19, subd. 3, 4(c), 5(c)	Liquor Taxation (Criminal Penalties)	1
297I.90, subd. 1& 2	Insurance Tax	3
299F.79	Intent to Manufacture Explosives	5
299F.80, subd. 1	Possession of Explosives Without Permit	5
299F.82, subd. 1	Transfer of Explosives	5
299F.83	Negligent Discharge of Explosive	5
299J	Pipeline Safety	Unranked
307.08, subd. 2(a)	Damages; Illegal Molestation of Human Remains; Burials; Cemeteries	3
325D.53, subd. 1(2)(a)	Price Fixing/Collusive Bidding	6
325D.53, subd. 1(1), subd. 1(2)(b)(c)	Price Fixing/Collusive Bidding	5
325D.53, subd. 1(3), subd. 2 & 3	Price Fixing/Collusive Bidding	Unranked
325E.201	Unlawful Transfers or Sales of Recordings	Unranked
325F.743	Precious Metal Dealers, Regulatory Provisions	2
325F.755, subd. 7	Prize Notices and Solicitations	1
340A.701	Unlawful Acts Involving Liquor	1
343.21, subd. 9(c)(d)(g)(i)	Torture or Cruelty to Pet or Companion Animal	Unranked
343.21, subd. 9(f)(h)	Service Animal Providing Service	Unranked
343.31, subd. 1(a)	Animal Fighting	Unranked
346.155	Failure to Control a Regulated Animal (Great Bodily Harm or Death)	2
349.2127, subd. 1-6; 349.22, subd. 4	Gambling Regulations	2
393.07, subd. 10	Federal Food Stamp Program (Over $5,000)	3
393.07, subd. 10	Federal Food Stamp Program ($5,000 or Less)	2
471.392	False Declaration of Claim (Over $5,000)	3
471.392	False Declaration of Claim ($5,000 or Less)	2
508.80	Fraudulent Instrument or Entry for Procuring a Certificate of Title	1
514.02, subd. 1(b)	Non-payment for Improvement (Over $5,000; Proceeds of Payments; Acts Constituting Theft)	3
514.02, subd. 1(b)	Non-payment for Improvement ($5,000 or Less; Proceeds of Payments; Acts Constituting Theft)	2

518B.01, subd. 14(d)	Violation of an Order for Protection	4
588.20, subd. 1	Failure to Appear in Court	1
609.165, subd. 1b	Certain Persons Not to Have Firearms or Ammunition	6
609.19, subd. 1	Murder 2nd Degree (Intentional Murder; Unintentional Drive-By-Shootings)	11
609.19, subd. 2	Murder 2nd Degree (Unintentional Murder)	10
609.195(a)	Murder 3rd Degree	10
609.195(b)	Murder 3rd Degree	9
609.20(1), (2) & (5)	Manslaughter 1st Degree	9
609.20(3) & (4)	Manslaughter 1st Degree	8
609.205(1) & (5)	Manslaughter 2nd Degree - Culpable Negligence	8
609.205(2), (3) & (4)	Manslaughter 2nd Degree - Hunting Accident	5
609.2112, subd. 1(a)	Criminal Vehicular Homicide (Death)	8
609.2112, subd. 1(b)	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	8[1]
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)	5
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)	3
609.2114, subd. 1(a)	Criminal Vehicular Operation (Death to an Unborn Child)	8
609.2114, subd. 1(b)	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	8[1]
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)	5
609.215	Aiding Suicide	Unranked
609.221	Assault 1st Degree (Great Bodily Harm)	9
609.222	Assault 2nd Degree (Dangerous Weapon)	6
609.223, subd. 1	Assault 3rd Degree (Substantial Bodily Harm)	4**
609.223, subd. 2	Assault 3rd Degree (Bodily Harm, Pattern of Child Abuse)	4
609.223, subd. 3	Assault 3rd Degree (Bodily Harm, Victim under 4)	4
609.2231, subd. 1	Assault 4th Degree (Peace Officer)	1
609.2231, subd. 2	Assault 4th Degree (Firefighters and Emergency Medical Personnel)	1
609.2231, subd. 3	Assault 4th Degree (Corrections Employee, Prosecutor, Judge, Probation Officer)	1**
609.2231, subd. 3a	Assault 4th Degree (Secure Treatment Facility Personnel)	1**
609.2231, subd. 4(b)	Assault 4th Degree Motivated by Bias	1***

609.2233	Felony Assault Motivated by Bias	See Note[2]
609.224, subd. 4	Assault 5th Degree (3rd or Subsequent Violation)	4
609.2241	Knowing Transfer of Communicable Disease	See Note[3]
609.2242, subd. 4	Domestic Assault	4
609.2245	Female Genital Mutilation	Unranked
609.2247	Domestic Assault by Strangulation	4
609.228	Great Bodily Harm Caused by Distribution of Drugs	8
609.229, subd. 3(a)	Crime Committed for Benefit of Gang	See Note[4]
609.229, subd. 3(c)	Crime Committed for Benefit of Gang	1
609.2325, subd. 3(a)(1)	Criminal Abuse of Vulnerable Adult (Death)	9
609.2325, subd. 3(a)(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	8
609.2325, subd. 3(a)(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
609.233, subd. 3(1)	Deprivation of Vulnerable Adult (Great Bodily Harm)	8
609.233, subd. 3(2)	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	5
609.2335	Financial Exploitation of Vulnerable Adult (Over $35,000)	7
609.2335	Financial Exploitation of Vulnerable Adult (Over $5,000)	5
609.2335	Financial Exploitation of Vulnerable Adult ($5,000 or Less)	4
609.235	Use of Drugs to Injure or Facilitate Crime	4
609.24	Simple Robbery	5
609.245, subd. 1	Aggravated Robbery 1st Degree	8
609.245, subd. 2	Aggravated Robbery 2nd Degree	6
609.25, subd. 2(1)	Kidnapping (Safe Release/No Great Bodily Harm)	6
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm)	9
609.25, subd. 2(2)	Kidnapping (Unsafe Release)	8
609.25, subd. 2(2)	Kidnapping (Victim under 16)	8
609.255, subd. 2	False Imprisonment (Restraint)	3
609.255, subd. 3(b)	False Imprisonment (Demonstrable Bodily Harm)	3
609.255, subd. 3(c)	False Imprisonment (Substantial Bodily Harm)	4
609.26, subd. 6(a)-(1)	Depriving Another of Cust. or Parental Rights	1
609.26, subd. 6(a)-(2)	Depriving Another of Cust. or Parental Rights	3

609.2662(1)	Murder of an Unborn Child 2nd Degree	11
609.2662(2)	Murder of an Unborn Child 2nd Degree	10
609.2663	Murder of an Unborn Child 3rd Degree	10
609.2664(1) & (2)	Manslaughter of an Unborn Child 1st Degree	9
609.2664-(3)	Manslaughter of an Unborn Child 1st Degree	8
609.2665-(1)	Manslaughter of an Unborn Child 2nd Degree	8
609.2665-(2), (3), & (4)	Manslaughter of an Unborn Child 2nd Degree	5
609.267	Assault of an Unborn Child 1st Degree	9
609.2671	Assault of an Unborn Child 2nd Degree	4
609.268, subd. 1	Death of an Unborn Child in Commission of Crime	9
609.268, subd. 2	Injury of an Unborn Child in Commission of Crime	4
609.27, subd. 1(1)	Coercion (Threat Bodily Harm)	3
609.27, subd. 1(2), (3), (4), (5), & (6)	Coercion (Property Value $2,500 or more)	3
609.27, subd. 1(2), (3), (4), (5), & (6)	Coercion (Property Value $301 - $2,500)	2
609.282	Labor Trafficking	Unranked
609.283	Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	Unranked
609.31	Leaving State to Evade Paternity	1
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B***
609.322, subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	See Note[5]
609.322, subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C
609.324, subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution	9
609.324, subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution	5
609.324, subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution	3
609.3242, subd. 2(2)	Prostitution Crimes (Gross Misd. Level) Committed in School or Park Zones	1
609.342	Criminal Sexual Conduct 1st Degree	A
609.343, subd. 1(a)(b)(g)	Criminal Sexual Conduct 2nd Degree	D
609.343, subd. 1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2nd Degree	B

609.344, subd. 1(a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D
609.344, subd. 1(e)(f) or subd. 1(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344, subd. 1(b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	G
609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C
609.345, subd. 1(a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345, subd. 1(b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree	F
609.3453	Criminal Sexual Predatory Conduct	See Note[6]
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***
609.355	Bigamy	Unranked
609.365	Incest	Unranked
609.375, subd. 2a	Nonsupport of Spouse or Child	1
609.377, subd. 3	Malicious Punishment of Child (2nd or Subsequent Violation)	4
609.377, subd. 4	Malicious Punishment of Child (Bodily Harm)	4
609.377, subd. 5	Malicious Punishment of Child (Substantial Bodily Harm)	4
609.377, subd. 6	Malicious Punishment of Child (Great Bodily Harm)	8
609.378	Child Neglect/Endangerment	5
609.385	Treason	Unranked
609.39	Misprision of Treason	Unranked
609.395	Obstructing Military Forces	Unranked
609.396, subd. 2	Unauthorized Presence at Camp Ripley	3
609.42, subd. 1 all sections	Bribery	4
609.425	Corrupting Legislator	Unranked
609.445	Failure to Pay Over State Funds (Over $5,000)	3

609.445	Failure to Pay Over State Funds ($5,000 or Less)	2
609.455	Permitting False Claims Against Government (Over $5,000)	3
609.455	Permitting False Claims Against Government ($5,000 or Less)	2
609.465	Presenting False Claims to Public Officer (Over $5,000)	3
609.465	Presenting False Claims to Public Officer ($5,000, or Less)	2
609.466	Medical Assistance Fraud (Over $35,000)	6
609.466	Medical Assistance Fraud (Over $5,000)	3
609.466	Medical Assistance Fraud ($5,000 or Less)	2
609.4751, subd. 3	Impersonating a Peace Officer	2***
609.48 subd. 4(1)	Perjury (Felony Trial)	5
609.48, subd. 4(2)	Perjury (Other Trial)	4
609.485, subd. 4(a)(1)	Escape from Felony Offense	3[7]
609.485, subd. 4(a)(2)	Escape, Mental Illness	1***
609.485, subd. 4(a)(3)	Escape with Violence from Gross Misdemeanor or Misdemeanor Offense	Unranked
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1***
609.485, subd. 4(a)(5)	Escape from Civil Commitment, Sexually Dangerous Persons	3
609.485, subd. 4(b)	Escape with Violence from Felony Offense	8
609.485, subd. 4(f)	Escape from Electronic Monitoring	3
609.486	Bullet-Resistant Vest During Crime	1
609.487, subd. 3	Fleeing Peace Officer	1
609.487, subd. 4(a)	Fleeing Peace Officer (Death)	10
609.487, subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)	6
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)	4
609.49	Failure to Appear in Court	1
609.493	Solicitation of Mentally Impaired Persons	See Note[8]
609.494, subd. 2(b)	Solicitation of Juveniles	See Note[8]
609.495, subd. 1	Aiding an Offender to Avoid Arrest	1
609.495, subd. 3	Accomplice after the Fact	Unranked
609.495, subd. 4	Taking Responsibility for Criminal Acts	See Note[9]

609.496; 609.497	Concealing Criminal Proceeds; Engaging in Business	Unranked
609.4971	Warning Subject of Investigation	Unranked
609.4975	Warning Subject of Surveillance or Search	Unranked
609.498, subd. 1a	Tampering with a Witness 1st Degree	5
609.498, subd. 1b	Tampering with a Witness Aggravated 1st Degree	9
609.50, subd. 2	Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew	3
609.502, subd. 1(1)	Interference with a Dead Body or Scene of Death	4
609.504	Disarming a Peace Officer	3
609.52, all sections[10]	Theft of Public Funds (Over $5,000)	3
609.52, all sections[10]	Theft of Public Funds ($5,000 or Less)	2
609.52, all sections[10]	Theft from Person	4
609.52, all sections[10]	Theft of Public Records	3
609.52, all sections[10]	Theft (Looting)	2
609.52, subd. 2(a)(1)	Theft (Over $5,000)	3
609.52, subd. 2(a)(1)	Theft ($5,000 or Less)	2
609.52, subd. 2(a)(1)	Theft of a Motor Vehicle	4[11]
609.52, subd. 2(a)(2)	Taking Pledged Property (Over $5,000)	3
609.52, subd. 2(a)(2)	Taking Pledged Property ($5,000 or Less)	2
609.52, subd. 2(a)(3) with subd. 3(1)	Theft by Check/False Representation (Over $35,000)	6
609.52, subd. 2(a)(3)(i)	Theft by Check ($5,001 - $35,000)	3
609.52, subd. 2(a)(3)(i)	Theft by Check ($5,000 or Less)	2
609.52, subd. 2(a)(3)(ii-v)	Theft by False Representation ($5,001 - $35,000)	3
609.52, subd. 2(a)(3)(ii-v)	Theft by False Representation ($5,000 or Less)	2
609.52, subd. 2(a)(4) with subd. 3(1)	Theft by Trick (Over $35,000)	6
609.52, subd. 2(a)(4)	Theft by Trick ($5,001 - $35,000)	3
609.52, subd. 2(a)(4)	Theft by Trick ($5,000 or Less)	2
609.52, subd. 2(a)(5)	Temporary Theft (Over $5,000)	3
609.52, subd. 2(a)(5)	Temporary Theft ($5,000 or Less)	2
609.52, subd. 2(a)(6)	Refusing to Return Lost Property (Over $5,000)	3
609.52, subd. 2(a)(6)	Refusing to Return Lost Property ($5,000 or Less)	2

609.52, subd. 2(a)(7)	Theft from Coin Operated Machine (Over $5,000)	3
609.52, subd. 2(a)(7)	Theft from Coin Operated Machine ($5,000 or Less)	2
609.52, subd. 2(a)(8)	Theft of Trade Secret	3
609.52, subd. 2(a)(9)	Theft of Leased Property (Over $5,000)	3
609.52, subd. 2(a)(9)	Theft of Leased Property ($5,000 or Less)	2
609.52, subd. 2(a)(10) & (11)	Altering Serial Number (Over $5,000)	3
609.52, subd. 2(a)(10) & (11)	Altering Serial Number ($5,000 or Less)	2
609.52, subd. 2(a)(12)	Theft of Cable TV Services (Over $5,000)	3
609.52, subd. 2(a)(13)	Theft of Cable TV Services ($5,000 or Less)	2
609.52, subd. 2(a)(13)	Theft of Services (Over $5,000)	3
609.52, subd. 2(a)(13)	Theft of Services ($5,000 or Less)	2
609.52, subd. 2(a)(14)	Theft of Telecommunication Services (Over $5,000)	3
609.52, subd. 2(a)(14)	Theft of Telecommunication Services ($5,000 or Less)	2
609.52, subd. 2(a)(15)(16) with subd. 3(1)	Diversion of Corporate Property (Over $35,000)	6
609.52, subd. 2(a)(15)(16)	Diversion of Corporate Property ($5,001 - $35,000)	3
609.52, subd. 2(a)(15)(16)	Diversion of Corporate Property ($5,000 or Less)	2
609.52, subd. 2(a)(17)[10]	Motor Vehicle Use Without Consent	3[11]
609.52, subd. 2(a)(18)	Theft of Motor Fuel from Retailer (Over $5,000)	3
609.52, subd. 2(a)(18)	Theft of Motor Fuel from Retailer ($5,000 or Less)	2
609.52, subd. 2(a)(19) with subd. 3(1)	Wage Theft (Over $35,000)	6
609.52, subd. 2(a)(19)	Wage Theft ($5,001-$35,000)	3
609.52, subd. 2(a)(19)	Wage Theft ($5,000 or Less)	2
609.52, subd. 3a(1)	Theft ($1,000 or Less; Risk of Bodily Harm)	2
609.52, subd. 3a(2)	Theft (Over $1,000; Risk of Bodily Harm)	See Note[12]
609.52, subd. 3a(2)	Theft ($501-$1,000, and Prior Conviction; Risk of Bodily Harm)	See Note[12]
609.52, subd. 3(1)	Theft of Firearm	4
609.52, subd. 3(2)	Theft of Incendiary Device	4
609.52, subd. 3(2)	Theft of Controlled Substances	4
609.52, subd. 3(3)(b)	Theft of Controlled Substances	3
609.52, subd. 3(3)(d)(iii)	Theft from an Abandoned or Vacant Building ($1,000 or Less)	1

609.521	Possession of Shoplifting Gear	3
609.525, all sections	Bringing Stolen Goods into State (Over $5,000)	3
609.525, all sections	Bringing Stolen Goods into State ($1,001 - $5,000)	2
609.525, all sections	Bringing Stolen Goods into State ($501 - $1,000, w/Previous Conviction)	2
609.526	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (2nd or Subsequent Violations)	4
609.526, subd. 2(1)	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods ($1,000 or More)	3
609.526, subd. 2(2)	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (Less than $1,000)	2
609.527, subd. 3(3)	Identity Theft	2
609.527, subd. 3(4)	Identity Theft	3
609.527, subd. 3(5)	Identity Theft	8
609.527, subd. 5a	Electronic Use of False Pretense to Obtain Identity	2
609.527, subd. 5b	Unlawful Possession or Use of Scanning Device or Reencoder	2
609.528, subd. 3(3)	Possession or Sale of Stolen or Counterfeit Check	2
609.528, subd. 3(4)	Possession or Sale of Stolen or Counterfeit Check	3
609.529	Mail Theft	2
609.53	Receiving Stolen Goods (Over $5,000)	3
609.53	Receiving Stolen Goods ($5,000 or Less)	2
609.53	Receiving Stolen Property (Firearm)	4
609.535, subd. 2a(a)(1)	Dishonored Check (Over $500)	2
609.54, all sections	Embezzlement of Public Funds (Over $2,500)	3
609.54, all sections	Embezzlement of Public Funds ($2,500 or Less)	2
609.551, all sections	Rustling of Livestock (Over $2,500)	3
609.551, all sections	Rustling of Livestock ($2,500 or Less)	2
609.561, all sections	Arson 1st Degree	8
609.562	Arson 2nd Degree	5
609.563, all sections	Arson 3rd Degree	3
609.5641, subd. 1a(a)	Wildfire Arson	2
609.5641, subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)	7

609.5641, subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)	8
609.5641, subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)	5
609.576, subd. 1(1)	Negligent Fires (Great Bodily Harm)	4
609.576, subd. 1(3)(iii)	Negligent Fires (Damage $2,500 or More)	2
609.576, subd. 2	Dangerous Smoking	3
609.582, subd. 1(a)	Burglary 1st Degree (Occupied Dwelling)	6[13]
609.582, subd. 1(b) (c)	Burglary 1st Degree (w/Weapon or Assault)	8
609.582, subd. 2(a)(1) (2)	Burglary 2nd Degree (Dwelling/Bank)	5
609.582, subd. 2(a)(3) (4)	Burglary 2nd Degree (Pharmacy/Tool)	4
609.582, subd. 2(b)	Burglary 2nd Degree (Government Building, Religious Est., Historic Property, or School Building)	5
609.582, subd. 3	Burglary 3rd Degree (Nonresidential)	4
609.586, subd. 2	Possession of Code Grabbing Devices	3
609.59	Possession of Burglary Tools	3
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)	3
609.593	Damage or Theft (Energy Transmission or Telecommunications)	3
609.594	Damage to Property (Critical Service Facilities, Utilities, and Pipelines)	Unranked
609.595, subd. 1(1) & (2)	Damage to Property (Risk Bodily Harm, Public Safety Motor Vehicle)	3
609.595, subd. 1(3), (4) & (5)	Damage to Property (Service to Public, Over $1,000, Over $500 and Subsequent)	2
609.595, subd. 1a(a)	Damage to Property (Motivated by Bias)	1***
609.596, subd. 1	Killing or Harming a Public Safety Dog	Unranked
609.597, subd. 3(3)	Assaulting or Harming a Police Horse	1***
609.597, subd. 3(1) & (2)	Assaulting or Harming a Police Horse	Unranked
609.611, all sections	Defrauding Insurer (Over $5,000)	3
609.611, all sections	Defrauding Insurer ($5,000 or Less)	2
609.612	Insurance Fraud (Employment of Runners)	Unranked
609.615, all sections	Defeating Security on Realty (Over $5,000)	3
609.615, all sections	Defeating Security on Realty ($5,000 or Less)	2
609.62, all sections	Defeating Security on Personalty (Over $5,000)	3

609.62, all sections	Defeating Security on Personalty ($5,000 or Less)	2
609.625, all sections	Aggravated Forgery (Non-Check)	2
609.63, all sections	Forgery	1
609.631, subd. 4(1)	Check Forgery (Over $35,000)	5
609.631, subd. 4(2)	Check Forgery (Over $2,500)	3
609.631, subd. 4(3)(a)	Check Forgery ($251 - $2,500)	2
609.631, subd. 4(3)(b)	Check Forgery ($250 or Less)	1
609.632, subd. 1 & 2 with subd. 4(a)	Counterfeiting Currency (Manufacturing or Printing/Means for False Reproduction)	Unranked
609.632, subd. 3 with subd. 4(b)(1)	Offering Counterfeit Currency (Over $35,000)	6
609.632, subd. 3 with subd. 4(b)(2)	Offering Counterfeit Currency ($5,001-$35,000)	3
609.632, subd. 3 with subd. 4(b)(3)	Offering Counterfeit Currency ($5,000 or Less)	2
609.635	Obtaining Signature by False Pretense	2
609.64	Recording, Filing of Forged Instrument	2
609.645	Fraudulent Statements	1
609.65(1)	False Certification by Notary Public	1
609.651, subd. 1 with 4(a)	State Lottery Fraud	1
609.651, subd. 1 with 4(b) and subd. 2 & 3	State Lottery Fraud	Unranked
609.652	Fraudulent Drivers' Licenses and Identification Cards	1
609.66, subd. 1a(a)(1)	Firearm Suppressor	2
609.66, subd. 1a(a)(1)	Firearm Suppressor (Public Housing, School or Park Zone)	3
609.66, subd. 1a(a)(2) & (3)	Discharge of Firearm (Public Housing, School or Park Zone)	2
609.66, subd. 1a(a)(2)	Discharge of Firearm (Intentional)	2
609.66, subd. 1a(a)(3)	Discharge of Firearm (Reckless)	1
609.66, subd. 1b	Furnishing Firearm to a Minor	2
609.66, subd. 1c	Furnishing a Dangerous Weapon	2
609.66, subd. 1d(a)	Dangerous Weapons on School Property	4
609.66, subd. 1e(a)	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3

609.66, subd. 1e(b)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8
609.66, subd. 1g	Weapon in Courthouse/Certain State Buildings	4
609.662, subd. 2(b)(1)	Duty to Render Aid (Death or Great Bodily Harm)	2
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1***
609.667	Remove or Alter Serial Number on Firearm	1
609.668, subd. 6	Explosive Devices/Incendiary Devices	6
609.67, subd. 2	Possession/Ownership of Machine and Shortbarreled Shotguns	3
609.671	Hazardous Wastes	Unranked
609.686, subd. 2	Tampering w/Fire Alarm System (Results in Bodily Harm)	3
609.686, subd. 2	Tampering w/Fire Alarm System (Potential for Bodily Harm)	1
609.687, subd. 3(1)	Adulteration Resulting in Death	11
609.687, subd. 3(2)	Adulteration Resulting in Bodily Harm	4
609.687, subd. 3(3)	Adulteration	Unranked
609.71, subd. 1	Riot 1st Degree	8
609.71, subd. 2	Riot 2nd Degree	2
609.712	Real/Simulated Weapons of Mass Destruction	Unranked
609.713, subd. 1	Threats of Violence (Terror/Evacuation)	4
609.713, subd. 2	Threats of Violence (Bomb Threat)	2
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1***
609.714	Offense in Furtherance of Terrorism	See Note[14]
609.746, subd. 1(e)	Interference with Privacy (Subsequent Violations or Minor Victim)	1
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)	G***
609.7475	Fraudulent or Improper Financing Statements	Unranked
609.748, subd. 6(d)	Violation of Harassment Restraining Order	4
609.749, subd. 3(a)(b)	Harassment (Aggravated Violations)	4
609.749, subd. 4(a)	Harassment (2nd Violation)	4
609.749, subd. 4(b)	Harassment (3rd or Subsequent Violations)	5
609.749, subd. 5	Stalking	5

609.76, subd. 2	Sports Bookmaking	4
609.76, subd. 3, 4, 5, 6, & 7	Gambling Acts (Cheating, Certain Devices Prohibited; Counterfeit Chips; Manufacture, Sale, Modification of Devices; Instruction)	Unranked
609.763	Lawful Gambling Fraud	Unranked
609.776	Interference with Emergency Communications	5***
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)	8
609.78, subd. 2b(1)	Emergency Telephone Calls and Communications (3rd or Subsequent, Making Calls When No Emergency Exists)	4
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)	5
609.80, subd. 2	Cable Communication Systems Interference	1
609.816	Wrongful Employment at a Child Care Center (Over $5,000)	3
609.816	Wrongful Employment at a Child Care Center ($5,000 or Less)	2
609.82, all sections	Fraud in Obtaining Credit (Over $5,000)	3
609.82, all sections	Fraud in Obtaining Credit ($5,000 or Less)	2
609.821, subd. 2(1) (2) (5) (6) (7) (8)	Financial Transaction Card Fraud (Over $2,500)	3
609.821, subd. 2(1) (2) (5) (6) (7) (8)	Financial Transaction Card Fraud ($2,500 or Less)	2
609.821, subd. 2(3) (4)	Financial Transaction Card Fraud	1
609.821, subd. 3(a)(1)(i)	Financial Transaction Card Fraud (Over $35,000)	5
609.822	Residential Mortgage Fraud	2
609.825, subd. 2	Bribery of Participant or Official in Contest	2
609.83	Falsely Impersonating Another	Unranked
609.85(1)	Dangerous Trespass, Railroad Tracks	3
609.851, subd. 2	False Traffic Signal	3
609.855, subd 2(c)(1)	Interference with Transit Operator	1
609.855, subd. 5	Discharge Firearm at Occupied Transit Vehicle/Facility	6
609.855, subd. 5	Discharge Firearm at Unoccupied Transit Vehicle/Facility	1
609.856	Police Radios During Commission of Crime	Unranked

609.86	Commercial Bribery	4
609.88	Computer Damage (Over $2,500)	3
609.88	Computer Damage ($2,500 or Less)	2
609.89	Computer Theft (Over $2,500)	3
609.89	Computer Theft ($2,500 or Less)	2
609.891, subd. 2(a) & (b)	Unauthorized Computer Access (Grave Risk or Subsequent)	Unranked
609.891, subd. 2(c)	Unauthorized Computer Access (Electronic Terminal)	2
609.8912	Computer Encryption	Unranked
609.893, subd. 1	Telecommunications and Information Services; Obtaining Services by Fraud (Over $2,500)	3
609.893, subd. 1	Telecommunications and Information Services; Obtaining Services by Fraud ($2,500 or Less)	2
609.893, subd. 2	Telecommunications and Information Services; Facilitation of Telecommunications Fraud	2
609.894, subd. 3	Cellular Counterfeiting 2nd Degree	1
609.894, subd. 4	Cellular Counterfeiting 1st Degree	2
609.895, subd. 3(a)	Counterfeited Intellectual Property	2
609.895, subd. 3(b)	Counterfeited Intellectual Property	1
609.896	Criminal Use of Real Property (Movie Pirating)	1
609.904	Racketeering (RICO)	Unranked
617.20	Abortion	Unranked
617.22	Abortion	Unranked
617.23, subd. 3	Indecent Exposure	G
617.241, subd. 4	Obscene Materials - Distribution	Unranked
617.246, subd. 2(a); 3(a); 4(a)	Use of Minors in Sexual Performance	E
617.246, subd. 2(b); 3(b); 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	D
617.247, subd. 3(a)	Dissemination of Child Pornography	E***
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	D
617.247, subd. 4(a)	Possession of Child Pornography	G
617.247, subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	F
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images	3

624.713, subd. 2(a)	Certain Persons Not to Have Firearms or Ammunition	3
624.713, subd. 2(b)	Certain Persons Not to Have Firearms or Ammunition	6
624.7132, subd. 15(b)	Transfer Pistol to Minor	2
624.714, subd. 1a	Pistol Without Permit (Subsequent Violations)	1
624.7141, subd. 2	Transfer Pistol to Ineligible Person	2
624.7181, subd. 2	Assault Weapon in Public (Under 21)	1
624.7191	Metal Penetrating Bullets	Unranked
624.731, subd. 8(a)	Tear Gas and Tear Gas Compounds; Electronic Incapacitation Devices	3
624.732, subd. 2	Intentional Release of Harmful Substance	3
626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)	Wire Communications Violations	Unranked
626.556, subd. 6	Failure to Report	Unranked
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order	4
641.165, subd. 2(b)	Bring Dangerous Weapon into County Jail	4

* See section 2.C. and Appendix 1 to determine the presumptive disposition.

** See section 2.C. and Appendix 1 to determine the presumptive disposition for assault committed by a State prison inmate or for assault on secure treatment facility personnel by persons committed to the Minnesota Sex Offender Program.

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

[1] See section 2.G.12 to determine the presumptive sentence.

[2] See section 2.G.11 to determine the presumptive sentence.

[3] See section 2.A.5 to determine the presumptive sentence.

[4] See section 2.G.10 to determine the presumptive sentence.

[5] See section 2.G. to determine the presumptive sentence.

[6] See section 2.G.8 to determine the presumptive sentence.

[7] See section 2.C. and Appendix 1 to determine the presumptive disposition for an escape from an executed sentence.

[8] See section 2.G.3 to determine the presumptive sentence.

[9] See section 2.G.6 to determine the presumptive sentence.

[10] Includes offenses sentenced according to Minnesota Statutes, section 609.52, subdivision 3(3)(d).

[11] See *Comment 2.A.05* for commentary on motor vehicle offense severity levels.

[12] See section 2.A.2.a-b to determine the severity level.

[13] See section 2.C.3.b and Appendix 1 to determine the presumptive disposition.

[14] See section 2.G.7 to determine the presumptive sentence.

6. Offenses Eligible for Permissive Consecutive Sentences

A. Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

B. Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

Statute Number	Offense Title
152.021, subd. 2a	Manufacture any Amount of Methamphetamine
152.021, subd. 2b(2) with ref. to 152.01, subd. 24(8)	Aggravated Controlled Substance Crime 1st Degree, Sale to a Minor or Vulnerable Adult
152.022, subd. 1(6)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023, subd. 1(3)	Sells Sch. I, II, III to Minor (not Narcotic)
152.023, subd. 1(4)	Sells Sch. I, II, III Employs Minor (not Narcotic)
152.024, subd. 1(2)	Schedule IV or V to Minor
152.024, subd. 1(3)	Employs Minor to Sell Schedule IV or V
152.0261, subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults
169.09, subd. 14(a)(1)	Accidents (Death)
169.09, subd. 14(a)(2)	Accidents (Great Bodily Harm)
169A.24	DWI 1st Degree
243.166, subd. 5(b)	Registration of Predatory Offenders
243.166, subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent)

518B.01, subd. 14(d)	Violation of an Order for Protection
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195	Murder 3rd Degree
609.20	Manslaughter 1st Degree
609.205	Manslaughter 2nd Degree
609.2112, subd. 1	Criminal Vehicular Homicide (Death)
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)
609.2114, subd. 1	Criminal Vehicular Operation (Death to an Unborn Child)
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)
609.215	Aiding Suicide
609.221	Assault 1st Degree
609.222	Assault 2nd Degree - Dangerous Weapon
609.223	Assault 3rd Degree
609.2231	Assault 4th Degree
609.224, subd. 4	Assault 5th Degree (3rd or Subsequent Violation)
609.2241	Knowing Transfer of Communicable Disease
609.2242, subd. 4	Domestic Assault
609.2245	Female Genital Mutilation

609.2247	Domestic Assault by Strangulation
609.228	Great Bodily Harm Caused by Distribution of Drugs
609.229, subd. 3	Crime Committed for Benefit of Gang
609.2325, subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)
609.2325, subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)
609.2325, subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)
609.233, subd. 3	Deprivation of Vulnerable Adult
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245, subd. 1	Aggravated Robbery 1st Degree
609.245, subd. 2	Aggravated Robbery 2nd Degree
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder of Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.2664	Manslaughter of an Unborn Child 1st Degree
609.2665	Manslaughter of an Unborn Child 2nd Degree
609.267	Assault of an Unborn Child 1st Degree
609.2671	Assault of an Unborn Child 2nd Degree

609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.282	Labor Trafficking
609.322, subd. 1(a)	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 1st Degree
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd Degree
609.324, subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution
609.342, subd. 1	Criminal Sexual Conduct 1st Degree
609.343, subd. 1	Criminal Sexual Conduct 2nd Degree
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree
609.3453	Criminal Sexual Predatory Conduct
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Internet or Computer)
609.365	Incest
609.377	Malicious Punishment of Child
609.378	Child Neglect/Endangerment
609.485, subd. 4(a)(3)	Escape with Violence from GM or Misd. Offense

609.485, subd. 4(b)	Escape with Violence from Felony Offense
609.487, subd. 3	Fleeing Peace Officer
609.487, subd. 4(a)	Fleeing Peace Officer (Resulting in Death)
609.487, subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.498, subd. 1a	Tampering with a Witness in the 1st Degree
609.498, subd. 1b	Tampering with a Witness, Aggravated 1st Degree
609.502, subd. 1(1)	Interference with a Dead Body or Scene of Death
609.527	Identity Theft
609.561	Arson in the 1st Degree
609.5641, subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of $100,000)
609.5641, subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of $250,000)
609.5641, subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)
609.582, subd. 1(a)	Burglary 1st Degree - of Occupied Dwelling
609.582, subd. 1(b)	Burglary 1st Degree with Dangerous Weapon
609.582, subd. 1(c)	Burglary 1st Degree with Assault
609.582, subd. 2(a)(1)	Burglary 2nd Degree - Dwelling
609.582, subd. 2(a)(2)	Burglary 2nd Degree - Bank
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)
609.594, subd. 2	Damage to Property - Critical Public Service Facilities

609.66, subd. 1e	Drive-By Shooting
609.662, subd. 2(b)(1)	Duty to Render Aid (Death or Great Bodily Harm)
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)
609.671	Hazardous Wastes
609.687, subd. 3(1)	Adulteration Resulting in Death
609.687, subd. 3(2)	Adulteration Resulting in Bodily Harm
609.71, subd. 1	Riot 1st Degree
609.712	Real/Simulated Weapons of Mass Destruction
609.713, subd. 1	Threats of Violence (Terror/Evacuation)
609.713, subd. 2	Threats of Violence (Bomb Threat)
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)
609.714, subd. 2	Crimes Committed in Furtherance of Terrorism
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)
609.748, subd. 6(d)	Violation of Harassment Restraining Order
609.749, subd. 3	Harassment (Aggravated Violations)
609.749, subd. 4	Harassment (Subsequent Violations)
609.749, subd. 5	Stalking
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)
609.855, subd. 2(c)(1)	Interference with Transit Operator

609.855, subd. 5	Discharge Firearm at Occupied Transit Vehicle/Facility
617.23, subd. 3	Indecent Exposure
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)
617.247, subd. 3(a)	Dissemination of Child Pornography
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)
617.247, subd. 4(a)	Possession of Child Pornography
617.247, subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images
624.7191	Metal Penetrating Bullets
624.732, subd. 2	Intentional Release of Harmful Substance
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order

7. Theft Offense List

It is recommended that the following property crimes be treated similarly. Below is the Theft Offense List cited for the Theft Crimes ($5,000 or less and over $5,000) in section 5.A Offense Severity Reference Table. The severity level for these offenses is based on the monetary amount of the conviction offense. The monetary amount is contained in the penalty statute as cited below:

Severity Level 2. When the monetary value of the Theft Crime is $5,000 or less, the penalty statute is Minnesota Statutes, section 609.52, subdivision 3(3)(a).

Severity Level 3. When the monetary value of the Theft Crime is over $5,000, the penalty statute is Minnesota Statutes, section 609.52, subdivision 3(2).

Statute Number	Offense Title
176.178	Workers' Compensation Fraud
256.98	Wrongfully Obtaining Assistance

268.182	Unemployment Benefit Fraud
393.07, subd. 10	Federal Food Stamp Program
471.392	False Declaration of Claim
514.02, subd. 1(b)	Non-payment for Improvement (Proceeds of Payments; Acts Constituting Theft)
609.445	Failure to Pay Over State Funds
609.455	Permitting False Claims Against Government
609.465	Presenting False Claims to Public Officer or Body
609.52	Theft of Public Funds
609.52, subd. 2(a)(1)	Theft
609.52, subd. 2(a)(2)	Taking Pledged Property
609.52, subd. 2(a)(3)(i)	Theft By Check
609.52, subd. 2(a)(3)(ii), (iii), (iv), & (v)	Theft By False Representation
609.52, subd. 2(a)(4)	Theft By Trick
609.52, subd. 2(a)(5)	Temporary Theft
609.52, subd. 2(a)(6)	Refusing to Return Lost Property
609.52, subd. 2(a)(7)	Theft from Coin Operated Machines
609.52, subd. 2(a)(9)	Theft of Leased Property
609.52, subd. 2(a)(10) & (11)	Altering Serial Number
609.52, subd. 2(a)(12)	Theft of Cable TV Services
609.52, subd. 2(a)(13)	Theft of Services
609.52, subd. 2(a)(14)	Theft of Telecommunications Services
609.52, subd. 2(a)(15) & (16)	Diversion of Corporate Property
609.52, subd. 2(a)(19)	Wage Theft
609.53	Receiving Stolen Property
609.611	Defrauding Insurer
609.615	Defeating Security on Realty
609.62	Defeating Security on Personalty
609.816	Wrongful Employment at a Child Care Center
609.82	Fraud in Obtaining Credit

8. Severe Violent Offense List

Each of the following is a "severe violent offense" within the meaning of sections 2.B.2e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.282	Labor Trafficking
609.342, subd. 1(c)(d)(e)(f)	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(c)(d)(e)(f)	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree
609.561, subd. 1 or 2	Arson 1st Degree
609.66, subd. 1e(b)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences *(section 2.E)* and presumptive sentences *(section 2.C)*. It is not exhaustive.

Presumptive disposition. Commitment.

Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.

Attempts and conspiracies. Mandatory sentences generally apply to attempted offenses under Minnesota Statutes, section 609.17, and conspiracies under Minnesota Statutes, section 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell on the applicable Grid, whichever is longer. (See *section 2.G* for more information on convictions for attempts, conspiracies and offenses with other sentence modifiers.)

Statute	Offense	Prerequisite or Conditions	Minimum Duration
152.021	Controlled Substance Crime 1st Degree	Prior felony conviction under Minnesota Statutes, section 152.021 or 152.022, or similar non-Minnesota offense	48 months
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction under Minnesota Statutes, section 152.021 or 152.022, or similar non-Minnesota offense	36 months
169A.24, subd. 1(2)	Driving while Intoxicated	Prior Felony DWI	Grid time
169A.24, subd.1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minnesota Statutes, section 609.2112.1(a)(2) thru (6) 609.2113.1(2) thru (6) 609.2113.2(2) thru (6) 609.2114.1(a)(2) thru (6) 609.2114.2(2) thru (6)	Grid time
243.166, subd. 5(b)	Violation of Predatory Offender Registration		Grid time*
243.166, subd. 5(c)	Violation of Predatory Offender Registration - Subsequent offense	Prior felony Violation of Predatory Offender Registration	24 months
609.1095, subd. 3	Dangerous Offender - 3rd Violent Felony	Statute cited	Grid time
609.221, subd. 2(b)	Assault 1st Degree, Deadly Force - Peace Officer or Correctional Employee		120 months
609.221, 609.222, 609.223, 609.2231, or 609.224	Assault 1st through 5th Degree	Committed by State prison inmate while confined (609.2232)	Grid time, Consecutive
609.2231, subd. 3a(b)	Assault 4th Degree	Committed by person committed to the Minnesota Sex Offender Program	Grid time
609.3455, subd. 3a	Dangerous (Engrained) Sex Offender	Statute cited	At least double the Grid time
609.485	Escape	Escape from executed sentence	Grid time
609.582, subd. 1(a)	Burglary 1st Degree	Prior felony burglary	Grid time*

* Presumptive commitment per Guidelines section 2.C.

Appendix 2. Dangerous Weapons Offense Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

Presumptive disposition. Commitment.

Presumptive duration. Mandatory minimum or the duration in the appropriate cell on the applicable Grid, whichever is longer.

Attempts and Conspiracies. Mandatory sentences generally apply to attempted offenses under Minnesota Statutes, section 609.17 and conspiracies under Minnesota Statutes, section 609.175. Mandatory minimums are not divided in half. The presumptive duration is the mandatory minimum duration found in statute or one-half of the duration in the appropriate cell of the applicable Grid, whichever is longer. (See *section 2.G* for more information on convictions for attempts, conspiracies and offenses with the other sentence modifiers.)

Dangerous Weapons - Minnesota Statutes, Section 609.11

Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.11, subd. 4	Dangerous Weapon (Other than Firearm)	Weapon is an element of crime or otherwise established	1 year and 1 day
609.11, subd. 4	Dangerous Weapon (Other than Firearm) - Subsequent Offense	Current dangerous weapon (other than firearm) offense with prior dangerous weapon (other than firearm) offense Weapon is an element of crime or otherwise established	36 months
609.11, subd. 5(a)	Firearm	Firearm is an element of crime or otherwise established	36 months
609.11, subd. 5(a)	Firearm - Subsequent Offense	Current firearm offense with prior firearm offense Firearm is an element of crime or otherwise established	60 months
609.11, subd. 5(b)	Certain Persons not to have Firearms or Ammunition	Current conviction under Minnesota Statutes, section 609.165, or Minnesota Statutes, section 624.713, subd. 1(2)	60 months

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

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.2231, subd. 4(b)	Assault 4th Degree Motivated by Bias	1	12, and 1 Day	CHS 3
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS 4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS 4
609.4751, subd. 3	Impersonating a Peace Officer	2	24	CHS 6 (upper-range)
609.485, subd. 4(a)(2)	Escape, Mental Illness	1	12, and 1 Day	CHS 3
609.485, subd. 4(a)(4)	Escape from Civil Commitment	1	12, and 1 Day	CHS 3
609.595, subd. 1a(a)	Damage to Prop Motivated by Bias	1	12, and 1 Day	CHS 3
609.597, subd. 3(3)	Assaulting or Harming Police Horse	1	12, and 1 Day	CHS 3
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)	1	12, and 1 Day	CHS 3
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)	1	12, and 1 Day	CHS 3
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)	G	48	CHS 5
609.776	Interference with Emergency Comm.	5	36	CHS 4
617.247, subd. 3(a)	Dissemination of Child Pornography	E	84	CHS 5

Appendix 4. Targeted Misdemeanor List

Published by the Revisor of Statutes under Minnesota Statutes, section 3C.08, subdivision 1.

(as provided for in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e))

Under Minnesota Statutes, section 299C.10, subdivision 1, paragraph (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