



Minnesota Sentencing Guidelines Commission Adopted Modifications to the Sentencing Guidelines

Effective for Crimes Committed on/after August 1, 2004

I. Adopted Modifications Related to New and Amended Crimes

The commission considered new and amended crime legislation from the 2004 Legislative Session and adopted a proposal to retain affected severity level rankings and guidelines policies, as follows:

- A. Blood Alcohol Concentration Level Reduction: The commission considered changes made to the blood alcohol concentration level reduction and adopted a proposal to maintain the current severity level rankings and guidelines policies for criminal vehicular operations and felony driving while impaired.
- B. Assault in the Fourth Degree: The commission considered changes made to assault in the fourth degree and adopted a proposal to maintain the current severity level I ranking for the crime.
- C. Misdemeanor and Gross Misdemeanor Offense List: The commission considered new and amended misdemeanors and gross misdemeanors and adopted a proposal to maintain the current Misdemeanor and Gross Misdemeanor Offense List.

II. Other Adopted Modifications

A. Criminal History: Felony Weights for Previously Unranked Offenses

The commission adopted a proposal to add language to comment II.B.101 of the sentencing guidelines to clarify that the policy applied to weighting prior felonies is also applied to offenses that were previously unranked.

II.B.101. *The basic rule for computing the number of prior felony points in the criminal history score....*

The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. 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.

B. Criminal History: Custody Status Point

The commission adopted a proposal to add language to section II.B.2 of the sentencing guidelines and comment II.B.206 of the sentencing guidelines to clarify that a custody status point should be assigned when the conviction offense involves multiple offenses that occur over a period of time.

Proposed Language

2. One point is assigned if the offender:
 - a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea or verdict in a felony, gross misdemeanor or an extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction; or
 - b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced; or
 - c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or-
 - d. became subject to one of the criminal justice supervision statuses listed in 2.a above at any point in time during which the offense occurred when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense.

II.B.206. *The commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, the offender should receive a custody status point if they become subject to one of the criminal justice supervision statuses outlined in 2.a 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.*

C. Concurrent/Consecutive Sentences: Permissive Consecutive Policy

The commission adopted the following language related to consecutive sentences in section II.F of the sentencing guidelines:

1. **Felony Assault Committed in Local Jail:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to clarify that a felony assault committed while in a local jail or workhouse may always be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.
2. **Escape from Nonexecuted Prison Sentence:** The commission adopted a proposal to modify language in section II.F of the sentencing guidelines to clarify that a felony escape from a nonexecuted prison sentence may always be sentenced consecutively.
3. **Dispositional Departures:** The commission adopted a proposal to add language to section II.F of the sentencing guidelines to explain that in some situations it is not a dispositional departure to execute a sentence for an offense for which consecutive sentencing is permissive when it is going to be sentenced consecutive to another executed sentence.

Proposed Language

Permissive Consecutive Sentences

Except when consecutive sentences are presumptive, consecutive sentences are permissive (may be given without departure) only in the following cases:

1. A current felony conviction for a crime against a person may be sentenced consecutively to a prior felony sentence for a crime against a person which has not expired or been discharged; or
2. Multiple current felony convictions for crimes against persons may be sentenced consecutively to each other; or
3. A current felony conviction for escape from lawful custody, as defined in Minn. Stat. § 609.485, when the offender did not escape from an executed prison sentence, may be sentenced consecutively to the sentence for the offense for which the offender was confined; or
4. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from a nonexecuted felony sentence may be sentenced consecutively to the sentence for the escape or for the offense for which the offender was confined; or
5. A current felony conviction for a crime committed while on felony escape from lawful custody, as defined in Minn. Stat. § 609.485, from an executed felony sentence may be

sentenced consecutively to the sentence for the escape; or

6. A current felony conviction for Fleeing a Peace Officer in a Motor Vehicle as defined in Minn. Stat. § 609.487 or Criminal Sexual Conduct in the First through Fourth Degrees with force or violence as defined in Minn. Stat. § 609.342 through 609.345; or
7. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the presumptive disposition for the other offense was commitment to the Commissioner of Corrections.

Consecutive sentences are permissive under the above criteria numbers ~~1-4~~ 1, 2, and 4 only when the presumptive disposition for the current offense(s) is commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. In addition, consecutive sentences are permissive under number 1 above, involving a current felony conviction for a crime against a person and a prior felony sentence for a crime against a person which has not expired or been discharged, only when the presumptive disposition for the prior offense(s) was commitment to the Commissioner of Corrections as determined under the procedures outlined in section II.C. If the judge pronounces a consecutive stayed sentence in these circumstances, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure if the offense meets one of the above criteria. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

Consecutive sentences are always permissive under the above criteria numbers 3, 5, and 6, or 7. There is no dispositional departure if the sentences are executed when consecutive sentences are pronounced under criteria numbers 3, 5, 6, or 7.

D. Misdemeanor/Gross Misdemeanor Offense List and Theft Offense List

The commission adopted a proposal to make the following modifications to the Misdemeanor and Gross Misdemeanor Offense List due to repealed, renumbered, and new statutes passed during the 2003 Legislative Session:

Carrying a pistol while under the influence of alcohol or a controlled substance
624.7142, subd. 6(a)(b)

Contributing to Delinquency of Minor
260.315 (Repealed. 1999 C. 139, Art. 4, S. 3)

Contributing to status as a juvenile petty offender or delinquency
260B.425