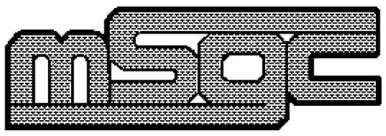
Minnesota Sentencing Guidelines Commission



MINNESOTA

SENTENCING GUIDELINES
and COMMENTARY

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MINNESOTA SENTENCING GUIDELINES AND COMMENTARY

I. Statement of Purpose and Principles

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.

The sentencing guidelines embody the following principles:

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

2. While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons.

3. Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those 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.

4. While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

II. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grids. The grids represent the two dimensions most important in current sentencing and releasing decisions--offense severity and criminal history.

A. Offense Severity: The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. For persons convicted under Minn. Stat. §§ 609.2241 – Knowing Transfer of Communicable Disease, 609.229, subd. 3 (a) - Crime Committed for Benefit of a Gang, 609.3453 – Criminal Sexual Predatory Conduct, or 609.714 – Offense in Furtherance of Terrorism, the severity level is the same as that for the underlying crime with the highest severity level.

For those convicted of multiple offenses when theft and damage to property aggregation procedures are used for sentencing purposes or when multiple offenses are an element of the conviction offense, the following rules apply:

a. If offenses have been aggregated under Minn. Stat. § 609.52, subd. 3(5), or § 609.595, the date of the earliest offense should be used as the date of the conviction offense;
b. If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the conviction offense must be determined by the factfinder. See, *State v. DeRosier, 719 N.W.2d 900 (Minn. 2006)*.

For persons sentenced under Minn. Stat. § 609.52, subd. 3a for which a violation involves a monetary value over $1,000, and creates a reasonably foreseeable risk of bodily harm to another, the severity level ranking is elevated by one severity level from that listed on the Offense Severity Reference Table.

Felony offenses, other than specified sex offenses, are arrayed into eleven levels of severity, ranging from low (Severity Level I) to high (Severity Level XI). Specified sex offenses are

arrayed on a separate grid into eight severity levels labeled A thru H. First degree murder and sex offenses under Minn. Stat. § 609.3455, subdivision 2 are excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity. The severity level for each felony offense is governed by Section V: Offense Severity Reference Table. Some offenses are designated as unranked offenses in the Offense Severity Reference Table. When unranked offenses are being sentenced, the sentencing judges shall exercise their discretion by assigning an appropriate severity level for that offense and specify on the record the reasons a particular level was assigned. If an offense is inadvertently omitted from the Offense Severity Reference Table, the offense shall be considered unranked and the above procedures followed.

Comment

II.A.01. *Offense severity is determined by the offense of conviction. The Commission thought that serious legal and ethical questions would be raised if punishment were to be determined on the basis of alleged, but unproven, behavior, and prosecutors and defenders would be less accountable in plea negotiation. It follows that if the offense of conviction is the standard from which to determine severity, departures from the guidelines should not be permitted for elements of offender behavior not within the statutory definition of the offense of conviction. Thus, 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.*

II.A.02. *The date of the offense is important because the offender's age at the time of the offense will determine whether or not the juvenile record is considered, the date of the offense might determine whether a custody status point should be given, and the date of offense determines the order of sentencing with multiple convictions. For those convicted of a single offense, there is generally no problem in determining the date of the offense.*

If the date of offense established by the above rules is on or before April 30, 1980, the sentencing guidelines should not be used to sentence the case.

II.A.03. *Some offenses, including Minn. Stat. §§ 609.2241 – Knowing Transfer of Communicable Disease, 609.229, subd. 3 (a) – Crime Committed for Benefit of a Gang, 609.3453 – Criminal Sexual Predatory Conduct, and 609.714 – Offense in Furtherance of Terrorism, involve other offenses committed under specific circumstances. The severity level for these offenses is the same as that of the underlying offense. The presumptive sentence for some of these offenses, however, is increased from that of the underlying offense as described in II.G: Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.*

II.A.04. *Offenses are generally left unranked because prosecutions for these offenses are rarely initiated, because the offense covers a wide range of underlying conduct, or because the offense is new and the severity of a typical offense cannot yet be determined. When exercising their discretion by assigning an appropriate severity level, sentencing judges may consider, but are not limited to, the following factors: 1) the gravity of the specific conduct underlying the*

unranked offense; 2) the severity level assigned to any ranked offense whose elements are similar to those of the unranked offense; 3) the conduct of and severity level assigned to other offenders for the same unranked offense; and 4) the severity level assigned to other offenders engaged in similar conduct.

Incest was left unranked because, since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes. If an offender is convicted of incest and the offense would have been a violation of one of the criminal sexual conduct statutes, the severity level of the applicable criminal sexual conduct statute should be used. For example, if a father is convicted of incest for the sexual penetration of his ten year old daughter, the appropriate severity level would be the same as criminal sexual conduct in the first degree. Conversely, when incest consists of behavior not included in the criminal sexual conduct statutes (for example, consenting sexual penetration involving individuals over age 18), sentencing judges should exercise their discretion to assign an appropriate severity level as described above.

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.

II.A.05. *There are two theft offenses involving a motor vehicle that are ranked individually on the Offense Severity Reference Table. For Theft of a Motor Vehicle, ranked at severity level IV, the offender must be convicted under the general theft statute, Minn. Stat. § 609.52, subd. 2 (1), and the offense must involve theft of a motor vehicle, in order for severity level IV to be the appropriate severity level ranking. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Minn. Stat. § 609.52, subd. 2 (17), the appropriate severity level is III, regardless of whether the sentencing provision that is cited is Minn. Stat. § 609.52, subd. 3 (3) (d) (v).*

B. Criminal History: A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grids. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.

The classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies is determined on the basis of current Minnesota offense definitions and sentencing policies, except that when a monetary threshold determines the offense classification, the monetary classification in effect at the time the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history index. Offenses which are petty misdemeanors by statute, or which are deemed petty misdemeanors by Minn. R. Crim. P. 23.02 (the only sanction is a fine less than the misdemeanor fine level defined in statute) and 23.04, are not used to compute the criminal

history index.

Comment

II.B.01. *The sentencing 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 sentencing guidelines, the offense of conviction is the primary factor, and criminal history is a secondary factor in dispositional decisions. In the past 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.*

II.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. These improvements will increase fairness and equity in the consideration of criminal history.*

II.B.03. *No system of criminal history record keeping ever will be totally accurate and complete, and any sentencing system will have to rely on the best available criminal history information.*

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and 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 before the current sentencing. Multiple offenses are sentenced in the order in which they occurred. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.

    a. If the current offense is not a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

        Severity Level I - II = ½ point;
        Severity Level III - V = 1 point;
        Severity Level VI - VIII = 1 ½ points;
        Severity Level IX - XI = 2 points;
        Murder 1st Degree = 2 points;
        Severity Level A = 2 points;
        Severity Level B – E = 1 ½ points;
        Severity Level F – G = 1 point; and
        Severity Level H = ½ point for first offense

and 1 point for subsequent offenses.

b. If the current offense is a specified sex offense, the weight assigned to each prior felony sentence is determined according to its severity level, as follows:

Severity Level I - II = ½ point;
Severity Level III - V = 1 point;
Severity Level VI - VIII = 1 ½ points;
Severity Level IX - XI = 2 points;
Murder 1st Degree = 2 points;
Severity Level A = 3 points;
Severity Level B – C = 2 points;
Severity Level D – E = 1 ½ points;
Severity Level F – G = 1 point; and
Severity Level H = ½ point for first offense
and 1 point for subsequent offenses.

The severity level to be used in assigning weights to prior offenses 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.

c. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. §§ 152.137, 609.585 or 609.251, only the offense at the highest severity level is considered; when multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. §§ 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.

d. Only the two offenses at the highest severity levels are considered for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;

e. When a prior felony conviction resulted in a misdemeanor or gross misdemeanor sentence, that conviction shall be counted as a misdemeanor or gross misdemeanor conviction for purposes of computing the criminal history score, and shall be governed by section II.B.3 below;

f. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.

The felony point total is the sum of these weights; no partial points are given.

Comment

II.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. Prior felony convictions for an attempt or conspiracy for which a felony sentence was stayed or imposed before the current sentencing are weighted the same as completed offenses. The felony point total is the sum of these weights. No partial points are given -- thus, a person with less than a full point is not given that point. For example, an offender with a total weight of 2 ½ would have 2 felony points.*

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.

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. For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity level III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III.

Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of controlled substance involved in the conviction. For prior Minnesota controlled substance crimes committed before August 1, 1989, and all prior foreign controlled substance convictions, the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the

severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender 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 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 judge, sentencing shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in II.A.b.

When the judge determines that permissive consecutive sentences will be imposed or determines that a departure regarding consecutive sentences will be imposed, the procedure in Section II.F shall be followed in determining the appropriate sentence duration under the guidelines.

II.B.102. *In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 152.137, under which persons 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, Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony, or a conviction under Minn. Stat. § 609.251 under which persons 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 Minn. Stats. §§ 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 pursuant to Minn. Stats. §§ 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.

II.B.103. *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.

II.B.104. *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 recognized that the classification of criminal conduct as a felony, misdemeanor, or gross misdemeanor is determined, legally, by the sentence given rather than the conviction offense. They also recognized that where such sentences were given, it was the opinion of the judge that the offending behavior did not merit felonious punishment, or other circumstances existed which justified a limit on the severity of the sanction.*

II.B.105. *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 judge. 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 is also geographical disparity with stays of imposition much less common in Ramsey County, for example, than in most other counties. As a result of the disparity that exists in the use of stays of imposition, the Commission determined that stays of execution and stays of imposition shall be treated the same with respect to criminal history point accrual. Similar treatment has the additional advantage of a simplified procedure for computing criminal history scores.*

II.B.106. *Finally, 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. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-five year period. 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 would not be counted in criminal history score computation if fifteen years had elapsed from the date of discharge or expiration of that sentence or stay of imposition to the date of the current offense. While this procedure does not include a measure of the offender's subsequent criminality, it has the overriding advantage of accurate and simple application.*

II.B.107. *A felony sentence imposed for a criminal conviction treated pursuant to Minn. Stat. Ch. 242 (Youth Conservation Commission and later Youth Corrections Board, repealed 1977) shall be assigned its appropriate weight in computing the criminal history score according to procedures in II.B.1.*

II.B.108. *An offense upon which a judgment of guilty has not been entered before the current sentencing; i.e., pursuant to Minn. Stat. § 152.18, subd. 1, shall not be assigned any weight in computing the criminal history score.*

II.B.109. *Under Minn. Stat. § 260B.130, a child alleged to have committed a felony offense*

under certain circumstances may be prosecuted as an extended jurisdiction juvenile. If the prosecution results in a guilty plea or finding of guilt and the court imposes a disposition according to Minn. Stat. § 260B.130, subd. 4 (a), the extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under sections II.B.1. a - f and corresponding commentary apply to extended jurisdiction juvenile convictions. If the extended jurisdiction juvenile conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.

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, guilty verdict, or extended jurisdiction juvenile conviction in a felony, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case; or
   b. was released pending sentencing at the time the felony was committed for which he or she is being sentenced following a guilty plea, guilty verdict, or extended jurisdiction juvenile conviction; 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.
   e. An additional custody status point shall be assigned if the offender was under any of the custody status conditions in a through d above for a specified sex offense, other than Failure to Register as a Predatory Offender (M.S. 243.166), and the current offense of conviction is a specified sex offense, other than Failure to Register as a Predatory Offender (243.166).

   The offender will not be assigned a point under this item when:

a. the person was committed for treatment or examination pursuant to Minn. R. Crim. P. 20; or

b. the person was on juvenile probation or parole status at the time the felony was committed for which he or she is being sentenced and was not on probation or supervised release status for an extended jurisdiction juvenile conviction.

An additional three months shall be added to the duration of the appropriate cell time which then becomes the presumptive duration when:

a. a custody status point is assigned; and

b. the criminal history points that accrue to the offender without the addition of the custody status point places the offender in the far right hand column of the Sentencing Guidelines Grids.

Three months shall also be added to the lower and upper end of the range provided in the appropriate cell. If the current conviction is an attempt or conspiracy under Minn. Stats. §§ 609.17 or 609.175 and three months is added to the cell duration under this section, the three months shall be added to the cell duration before that duration is halved pursuant to section II.G: Convictions for Attempts, Conspiracies, and Other Sentence Modifiers when determining the presumptive sentence duration. No presumptive duration, however, shall be less than one year and one day.

Comment

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge. An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence. Probation given for an offense treated pursuant to Minn. Stat. § 152.18, subd. 1, will result in the assignment of a custody status point because a guilty plea has previously been entered and the offender has been on a probationary status. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. 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*

conviction. Probation, jail, or other custody status arising from a conviction for misdemeanor or gross misdemeanor traffic offenses are excluded. Probation, parole, and supervised release will be the custodial statuses that most frequently will result in the assignment of a point. It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony or gross misdemeanor. Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence at the time the current offense was committed would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.

II.B.202. *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 offenses and 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.*

II.B.203. *The most problematic consequence of a criminal history score 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 seven and is released pending sentencing for a severity level three offense, and he or she commits another severity level three offense while awaiting sentencing, the presumptive sentence for the most recent offense is the same as for the prior offense. There is a presumption against consecutive sentences for property offenses, and therefore no additional penalty is provided when this type of situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.*

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 that displayed by the Sentencing Guidelines Grids is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current offense of conviction. 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 Grids and with the special provision for maintaining the impact of the custody status provision. Further differentiation is deemed unnecessary to achieve proportionality in sentencing.

II.B.204. *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.*

II.B.205. *When an offender who is on any custody status condition listed above 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 such 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 (M.S. 243.166).*

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is for criminal vehicular homicide or operation or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide or operation violations.

   a. Only convictions of statutory misdemeanors and gross misdemeanors listed in the Misdemeanor and Gross Misdemeanor Offense List (see Section V.) shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

   b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, no offender shall be assigned more than one unit.

   c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

Comment

II.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 on the criminal history score. No partial points are given--thus, a person with three units is assigned no point value.

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or operation and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or operation or first degree (felony) driving while impaired.

The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.

The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one unit in computing the criminal history. Effective for crimes occurring on or after August 1, 1997, all fleeing a peace officer in a motor vehicle offenses are felonies. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned the appropriate weight for each sentence subject to the provisions in II.B.1.).

II.B.302. *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, persons 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. The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s). Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines.*

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 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, or 609.21 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.

The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

II.B.303. *The Commission adopted a policy regarding multiple misdemeanor or gross misdemeanor sentences arising from a single course of conduct under Minn. Stat. § 609.585, that parallels their policy regarding multiple felony sentences under that statute. It is possible for a person who commits a misdemeanor in the course of a burglary to be convicted of and sentenced for a gross misdemeanor (the burglary) and the misdemeanor. If that situation exists in an offender's criminal history, the policy places a one-unit limit in computing the misdemeanor/gross misdemeanor portion of the criminal history score.*

II.B.304. *The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. Instead of calculating the decay period from the date of discharge as with felonies, the decay period for misdemeanor and gross misdemeanor sentences begins at the date of conviction. The range of sentence length for misdemeanor and gross misdemeanor sentences is much less than for felony sentences and therefore basing the decay period on date of conviction is less problematic than it would be with prior felonies. A conviction based decay period rather than a discharge based decay period for misdemeanor and gross misdemeanors facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records. The decay period for misdemeanor and gross misdemeanor sentences also differs from the felony decay procedure in that the ten year misdemeanor decay period is absolute and not dependent on the date of the current offense. If, for example, the ten year period elapses between date of offense for a new felony and sentencing for that offense, the prior misdemeanor offense is not included in the criminal history score computation. This procedure also facilitates a uniform retention schedule for misdemeanor and gross misdemeanor records.*

II.B.305. *Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02, will not be used to compute the criminal history score.*

II.B.306. *Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2*

(1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.

II.B.307. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple convictions arising from a single course of conduct when single victims are involved, consideration should be given to the most severe offense for purposes of computing criminal history when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251. When there are multiple misdemeanor or gross misdemeanor 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 purposes of computing criminal history. These are the same policies that apply to felony convictions and juvenile findings.*

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that are felonies under Minnesota law, provided that:

    a. Findings were made by the juvenile court pursuant to an admission in court or after trial;

    b. Each offense represented a separate behavioral incident or involved separate victims in a single behavioral incident;

    c. The juvenile offenses occurred after the offender's fourteenth birthday;

    d. The offender had not attained the age of twenty-five at the time the felony was committed for which he or she is being currently sentenced; and

    e. Generally, an offender may receive only one point for offenses committed and prosecuted as a juvenile. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would presume imprisonment. The presumptive disposition of the juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment. This determination is made regardless of the criminal history score and includes those offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section II.C. Presumptive

Sentence.

Comment

II.B.401. *The juvenile history item is included in the criminal history index 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 index. 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 originally decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

Effective January 1, 1995, the Legislature enacted many substantive changes to the juvenile justice system. Included in these changes are the right to effective assistance of counsel in connection with a proceeding in juvenile court and the right to a jury trial on the issue of guilt for a child who is prosecuted as an extended jurisdiction juvenile. Because these rights are now afforded to juveniles, the standards regulating the consideration of juvenile records in computing the criminal history score are broadened.

II.B.402. *First, only juvenile offenses that are felonies under Minnesota law will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. Consistent with Minn. Stat. § 609.035 which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.*

II.B.403. *Second, the juvenile offenses must have been committed after the offender's fourteenth birthday. The Commission chose the date of the offense rather than the date the findings were made by the court to eliminate variability in application based on differing juvenile court practices.*

II.B.404. *Third, juvenile offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of 25 at the time the felony was committed 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.*

II.B.405. *Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile offenses to equal one point on the criminal history score, and generally, an offender may not receive more than one point on the basis of prior juvenile offenses. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any mandatory minimum laws that apply to the offense or any other applicable policies under section II.C. Presumptive Sentence. 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 offenses are required for each additional point. Again, no partial points*

are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score.

II.B.406. *Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of more than one. The Commission was concerned with possible past disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to give proper notice that in the future, the juvenile history can result in more than one criminal history point.*

II.B.407. *In order to provide a uniform and equitable method of computing criminal history scores for cases of multiple felony offenses with findings arising from a single course of conduct when single victims are involved and when the findings involved provisions of Minn. Stats. § 609.585 or 609.251, consideration should be given to the most severe offense with a finding for purposes of computing criminal history. When there are multiple felony offenses with findings arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe felony offenses with findings for purposes of computing criminal history. These are the same policies that apply to felony, gross misdemeanor and misdemeanor convictions for adults.*

5. The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law. The weighting of prior out-of-state felonies is governed by section II.B.1 (above) and shall be based on the severity level of the equivalent Minnesota felony offense; Federal felony offenses for which there is no comparable Minnesota offense shall receive a weight of one in computing the criminal history index score. The determination of the equivalent Minnesota felony for an out-of-state felony is an exercise of the sentencing court's discretion and is based on the definition of the foreign offense and the sentence received by the offender.

   The determination as to whether a prior out-of-state conviction for a felony offense committed by an offender who was less than 18 years old should be included in the juvenile section or adult section of the criminal history score is governed by Minnesota law. The conviction should be included in the juvenile history section if it meets the requirements outlined in II.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 occurred in Minnesota. See *State v. Marquetti, 322 N.W.2d 316 (Minn. 1982)*.

Comment

II.B.501. *Out-of-state convictions 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.*

II.B.502. *The Commission concluded that convictions from other jurisdictions must, in fairness, be considered in the computation of an offender's criminal history index score. It was recognized, however, that criminal conduct may be characterized differently by the various state and federal criminal jurisdictions. There is no uniform nationwide characterization of the terms "felony," "gross misdemeanor," and "misdemeanor." Generally, the classification of prior offenses as petty misdemeanors, misdemeanors, gross misdemeanors, or felonies should be determined on the basis of current Minnesota offense definitions and sentencing policies. Exceptions to this are offenses in which a monetary threshold determines the offense classification. In these situations, the monetary threshold in effect at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.*

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score. For instance, if the current offense is a first degree (felony) driving while impaired (DWI) offense and the offender has a prior felony DWI offense, the prior felony DWI shall be used in computing the criminal history score, but the prior misdemeanor and gross misdemeanor offenses used to enhance the prior felony DWI cannot be used in the offender’s criminal history. Similarly, if the current offense is any other enhanced felony, prior misdemeanor and gross misdemeanor offenses used to enhance the current offense to a felony shall be excluded from computing the criminal history score (other than the custody status point), but prior felony offenses used for enhancement shall be included.

Comment

II.B.601. *There are a number of instances 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.

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. The criminal history score is the sum of points accrued under items one through four above.

C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis of the appropriate grid. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis of the appropriate grid. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grids are presumptive with respect to the duration of the sentence and whether imposition or execution of the felony sentence should be stayed.

The shaded areas on the Sentencing Guidelines Grids demarcate those cases for whom the presumptive sentence is stayed from those for whom the presumptive sentence is executed. 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.

Pursuant to M.S. § 609.3455, certain sex offenders are subject to mandatory life sentences. The sentencing guidelines presumptive sentence does not apply to offenders subject to mandatory life without the possibility of release sentences under subdivision 2 of that statute.

For offenders subject to life with the possibility of release sentences under subdivisions 3 and 4 of that statute, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for release.

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd. 1 (a)) and there was a previous conviction for a felony burglary before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. See *State v. Jones, 587 N.W.2d 854 (Minn. App. 1999)* A conviction too old to be used for criminal history may trigger the presumptive commitment. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

When the current conviction offense is a first, second, or third-degree controlled substance crime and there was a previous conviction or a disposition under section 152.18, subd. 1 for a felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or a similar conviction or disposition elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is commitment to the Commissioner of Corrections. The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. A conviction or disposition too old to be used for criminal history may trigger the presumptive commitment. However, stays of adjudication must be distinguished from convictions and dispositions under Minn. Stat. § 152.18. A previous stay of adjudication under Minn. Stat. § 152.18, subd. 1 is not relevant if ten years have elapsed since discharge from the stay of adjudication (Minn. Stat. §152.01 Subd.16a). The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer. The requirement regarding previous dispositions under section 152.18 applies only if the previous dispositions occurred on or after August 1, 1999.

When the current conviction is for felony DWI, and the offender had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI; or as defined by Minn. Stat. § 169A.24 subd. 1 (3), for a criminal vehicular homicide or operation, prior to commission of the current offense, the presumptive disposition is commitment to the Commissioner of Corrections.

The provisions providing for the decay of convictions used to calculate criminal history points, which are set forth in section II.B.1.f., do not apply to this requirement. A conviction too old to be used for criminal history may trigger the presumptive commitment.

In addition, the presumptive disposition for an escape from an executed sentence and for a felony assault committed by an inmate serving an executed term of imprisonment is commitment to the Commissioner of Corrections. It is presumptive for these offenses to be sentenced consecutively to the offense for which the inmate was confined and the presumptive duration is determined by the presumptive consecutive policy (See II.F. Presumptive Consecutive Sentences).

Every cell in the Sentencing Guidelines Grids provides a fixed duration of sentence. For cells above the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge pursuant to Minn. Stat. § 244.10, subd. 2, and Section II.D. of these guidelines.

Comment

II.C.01. *The guidelines provide sentences which are presumptive with respect to (a) disposition--whether or not the sentence should be executed, and (b) duration--the length of the sentence. For cases outside the shaded areas of the grids, the guidelines create a presumption in favor of execution of the sentence. For cases in cells within the shaded areas, the guidelines create a presumption against execution of the sentence, unless the conviction offense carries a mandatory minimum sentence.*

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, that 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.

II.C.02. *In the cells outside of 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 shall be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell of the Sentencing Guidelines Grids is not a departure from the guidelines, and any sentence length given which is outside that 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.

The presumptive duration listed on the grids, when executed, includes both the term of imprisonment and the period of supervised release. According to M.S. § 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. A separate table following the Sentencing Guidelines 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's serving the entire executed sentence in prison.

II.C.03. *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, that is a departure from the guidelines.*

II.C.04. *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 on 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 of the Sentencing Guidelines Grids, that is a departure from the guidelines.*

II.C.05. *If an offender is convicted of a felony, and no stayed sentence is given under Minn. Stat. § 609.13 through 609.14, and the judge imposes or stays a misdemeanor or gross misdemeanor sentence, that is a departure from the guidelines.*

II.C.06. *When an offender is convicted of two or more offenses, and the most severe offense is a conviction for attempt or conspiracy under Minn. Stat. § 609.17 or 609.175, the presumptive sentence duration shall be the longer of (1) the duration for the attempt or conspiracy conviction, or (2) the duration for the next most severe offense of conviction.*

II.C.07. *The term "sale" as it relates to presumptive imprisonment for second or subsequent sale of a severity level VI drug or sale of cocaine encompasses all elements of Minn. Stat. § 152.09 subd. 1 (1) which reads "Manufacture, sell, give away, barter, deliver, exchange or distribute; or possess with intent to manufacture, sell, give away, barter, deliver, exchange or distribute, a controlled substance" or Minn Stat. § 152.01, subd. 15a which reads " 'Sell' means to sell, give away, barter, deliver, exchange, distribute or dispose of to another; or to offer or agree to do the same; or to manufacture", if the offense was committed after August 1, 1989.*

II.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 judge to pronounce a minimum term of imprisonment, based on the sentencing guidelines and any applicable mandatory minimum, that the offender must serve before being considered for release. All applicable sentencing guidelines provisions, including the procedures for departing from the presumptive sentence, are applicable in the determination of the minimum term of imprisonment for these sex offense sentences.

II.C.09. Post-Blakely Sentencing Issues

The United States Supreme Court and the Minnesota Supreme and Appellate Courts have ruled that any fact other than a prior conviction that increases the penalty for the crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. Sentencing procedures that fail to provide this process are unconstitutional and violate a defendant's Sixth Amendment right under the United States Constitution. Although the ruling by the court appears clear, there are multiple issues surrounding what constitutes an enhancement, as well as what constitutes a statutory maximum sentence, that are being addressed by the courts. The Sentencing Guidelines Commission, in an effort to assist practitioners involved in sentencing procedures, is providing a summary of court decisions to date involving Blakely sentencing issues. The information provided is not intended to be considered as an exhaustive list of relative cases, but rather intended to serve as a guide to assist in sentencing.

Statutory Maximum Sentence

***Apprendi v. New Jersey**, 530 U.S. 466 (2000). Case involved a defendant that pled guilty to 2nd degree possession of a firearm for unlawful purposes that carried a prison sentence of between 5 and 10 years. The state requested the court to make the factual finding necessary to impose the state's Hate Crime Law sentencing enhancement provision, increasing the sentence to between 10 and 20 years. The judge held the requested hearing, listened to the evidence and determined by a preponderance of the evidence standard that crime met the Hate Crime Law criteria. The court's imposition of an enhanced prison sentence based on the hate crime statute exceeded the statutory maximum sentence for the underlying offense. Court ruled that any factor other than a prior conviction that increases the penalty for the crime beyond the statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.*

Presumptive Sentence

***Blakely v. Washington**, 1264 S.Ct. 2531 (2004). Case involved the court's imposition of an exceptional sentence under the state's sentencing guidelines, for which justifiable factors were provided, which exceeded the presumptive guidelines sentence but was less than the statutory maximum sentence for the offense. Court reaffirmed and clarified its earlier ruling in Apprendi stating, that under the Sixth Amendment, all factors other than prior criminal convictions that increase a criminal defendant's sentence beyond what it would have been absent those facts, must be presented to a jury and proven beyond a reasonable doubt. The jury trial right does not just mean that a defendant has the right to present a case to the jury; it also means that a defendant has a right to have a jury, not the court, make all the factual findings required to impose a sentence in excess of the presumptive guideline sentence, unless the defendant formally admits some or all of the factors or formally waives that right.*

***State v. Shattuck**, 704 N.W. 2d 131 (Minn. 2005). Case involved a defendant that was convicted of 2 counts of kidnapping, 2 counts of 1st degree sexual conduct, and 1 count of aggravated robbery. The presumptive guideline sentence for these offenses would have been*

161 months given the severity level VII ranking with a criminal history score of 9, including a custody status point. Under the Repeat Sex Offender Statute, for certain types of 1st and 2nd degree sexual conduct offenses, the court ***shall*** *commit the defendant to not less than 30 years if the court finds (1) an aggravating factor exists which provides for an upward departure, and (2) the offender has previous convictions for 1st, 2nd or 3rd degree criminal sexual conduct. The court imposed a 161 month sentence for the kidnapping conviction and 360 months for the 1st degree criminal sexual conduct, using the Repeat Sex Offender Statute. The court found that a jury, not the court, must make the determination that aggravating factors are present to impose an upward durational departure under the sentencing guidelines, citing the Blakely ruling. The decision also held that Minn. Stat. § 609.109 is unconstitutional since it authorizes the court to impose an upward durational departure without the aid of a jury.*

The court also ruled that the Minnesota Sentencing Guidelines are not advisory and that the imposition of the presumptive sentence is mandatory absent additional findings. This finding specifically rejects the remedy that the guidelines are advisory as set forth in the United States Supreme Court in United States v. Booker 125 S. Ct. 738 (2005). In addition, the decision stated that Minnesota Sentencing Guidelines Section II.D, which pertains to the manner in which aggravated departures are imposed, is "facially unconstitutional" and must be severed from the remainder of the guidelines. However, the remainder of the guidelines shall remain in effect and mandatory upon the courts. The court also noted in Shattuck that Minnesota Courts have the inherent authority to authorize the use of sentencing juries and bifurcated proceedings to comply with Blakely. While the Supreme Court was deciding the Shattuck case, the legislature amended Minn. Stat. § 609.109 to comply with the constitutional issues raised in Blakely. However, the court took no position on the constitutionality of legislative action. Acknowledging the court's inherent authority to create rules and procedures, the decision stated that it was the belief of the court that the legislature should decide the manner in which the sentencing guidelines should be amended to comply with the constitutional requirements of Blakely. On October 6, 2005, the Minnesota Supreme Court issued an order amending the Shattuck opinion clarifying that the legislature has enacted significant new requirements for sentencing aggravated departures which included sentencing juries and bifurcated trials. It further clarified that these changes apply both prospectively and to re-sentencing hearings. This clarification enables re-sentencing hearings to include jury determination of aggravating factors and the imposition of aggravated departure sentences.

State v. Allen, *706 N.W.2d 40 (Minn. 2005). Case involved a defendant who pled guilty to 1st degree test refusal as part of a negotiated plea agreement in exchange for the dismissal of other charges and the specific sentence to be determined by the court. The district court determined the defendant had a custody point assigned to their criminal history, since the defendant was on probation for a prior offense at the time of the current offense. The presumptive guidelines sentence was a 42 month stayed sentence. However, based on the defendant's numerous prior alcohol-related convictions and history of absconding from probation, the court determined the defendant was not amenable to probation and sentenced the defendant to a 42 month executed prison sentence, representing an aggravated dispositional departure under the sentencing guidelines. The case was on appeal when Blakely v. Washington was decided. The court ruled that a stayed sentence is not merely an alternative mode of serving a prison sentence, in that the additional loss of liberty encountered with an executed sentence exceeds the maximum penalty allowed by a plea of guilty or jury verdict, thus violating the defendant's Sixth Amendment Constitutional right. The court viewed a sentence disposition as much an element of the presumptive sentence as the sentence duration. Dispositional departures that are based on offender characteristics are similar to indeterminate sentencing model judgments and must be part of a jury verdict in that "amenability to probation" is not a fact necessary to constitute a crime. When the district court*

*imposed an aggravated dispositional departure based on the aggravating factor of unamenability to probation without the aid of a jury, the defendant's constitutional rights were violated under Blakely. Unamenability to probation may be used as an aggravating factor to impose an upward dispositional departure, but it must be determined by a jury and not the court. The Allen case also raises the issue and much speculation whether probation revocations resulting in an executed prison sentence are also subject to Blakely provisions. Although the Allen case focuses on imposition of an executed prison sentence as the result of an aggravated dispositional departure sentence based on the defendant's unamenability to probation, the court's stated reasons in its ruling could be interpreted as to be applicable to probation revocations that result in the imposition of an executed sentence due to an offender's lack of progress or success on probation. The Sentencing Guidelines Commission awaits further action by the Minnesota Courts addressing this specific issu*e.

***State v. Conger**, 687 N.W.2d 639 (Minn. App. 2004). Case involved a defendant who pled guilty to aiding and abetting in a 2nd degree intentional and unintentional murder. At sentencing, the judge determined that multiple aggravating factors were present and imposed an upward durational departure. The court ruled that the presumptive sentence designated by the guidelines is the maximum sentence a judge may impose without finding facts to support a departure. Any fact other than prior conviction used to impose a departure sentence must be found by a jury or admitted by the defendant. The court also ruled that when a defendant pleads guilty, any upward departure that is not entirely based on the facts admitted in the guilty plea is a violation of the defendant's Sixth Amendment rights and unconstitutional.*

***State v. Mitchell**, 687 N.W.2d 393 (Minn. App. 2004). Case involved a defendant who was arrested for theft with a presumptive guidelines sentence of 21 months. The judge determined the defendant is a career criminal under Minn. Stat. §609.1095 subd. 4 (2002) after determining the defendant had 5 or more prior felony convictions and the current conviction was part of a "pattern of criminal conduct." The judge imposed an upward departure of 42 months. The court ruled that a pattern of criminal conduct may be shown by criminal conduct that is similar but not identical to the charged offense in such factors as motive, results, participants, victims or shared characteristics. This determination goes beyond the mere fact of prior convictions since prior convictions do not address motive, results, participants, victims, etc. A jury, not a judge, must determine if the defendant's prior convictions constitute a "pattern of criminal conduct" making him a career criminal.*

***State v. Fairbanks,** 688 N.W. 2d 333 (Minn. App. 2004). Case involved a defendant who was convicted of 1st degree assault of a correctional employee and kidnapping. The judge sentenced the defendant under the Dangerous Offender Statute which provides for a durational departure from the presumptive guideline sentence. Criteria necessary for sentencing under this statute include (1) two or more convictions for violent crimes and (2) offender is a danger to public safety. Defendant stipulated to the past criminal behavior during trial but that admission by the defendant alone does not permit a finding that the defendant is a danger to public safety. That finding must be determined by a jury. A judge can only depart upward based solely on prior convictions. The court also ruled that a defendant's waiver of Blakely rights must be knowing, intelligent and voluntary.*

Mandatory Minimum – Minn. Stat. § 609.11

Effective August 1, 2006, Minn. Stat. § 609.11 provides for a mandatory minimum prison sentence when the factfinder determines that the defendant possessed a deadly weapon while committing the predicate offense. If an offense that occurred before August 1, 2006, is charged under § 609.11, the defendant cannot be sentenced to the mandatory minimum when the resulting sentence is higher than the presumptive sentence for the predicate offense, unless the same Blakely-based procedure is followed. State v. Barker, 705 NW2d 768 (Minn. 2005). In cases where the weapon is an element of the offense, there is no Blakely issue.

Custody Status Point

***State v. Brooks,** 690 N.W. 2d 160 (Minn. App. 2004). Case involved a defendant convicted of a 5th degree assault and tampering with a witness. The defendant had a criminal history score of 6 or more prior to the sentencing for this conviction. The guidelines provide for a three month enhancement for the custody status point. Defendant argued the three month enhancement is in violation of Blakely. Court rules that determination of the custody status point is analogous to the Blakely exception for "fact of prior conviction." Like a prior conviction, a custody status point is established by court record based on the fact of prior convictions and not by a jury. Presumptive sentencing is meaningless without a criminal history score, which includes the determination of custody status points.*

Retroactivity

***State v. Petschl,** 692 N.W.2d 463 (Minn. App. 2004). Blakely provisions apply to all cases sentenced or with direct appeals pending on or after June 24, 2004.*

State v. Houston, *702 N.W.2d 268, 273 (Minn. 2005). The Minnesota Supreme Court determined that Blakely could be applied retroactively to cases on direct review, but not collateral review. Teague v. Lane stated that in order for an issue to be retroactive for collateral review, the case needs to state a rule of law that is either: (1) new or not dictated by precedent or (2) a "Watershed" rule meaning it requires an observance of those criminal procedures that are implicit in the concept of liberty. The court ruled that Blakely is not a rule of "watershed" magnitude since the accuracy of the conviction is not diminished. A Blakely violation results only in a remand for sentencing rather than a new trial to determine the validity of the conviction, thus Blakely does not apply to appeals on collateral review.*

State v. Beaty, *696 N.W.2d. 406 (Minn. App. 2005). Case involved a defendant who pled guilty to a charge with a violation of an order for protection (OFP) and terroristic threats. At sentencing the court imposed the presumptive guideline sentence of 18 months stay of execution. The defendant subsequently violated probation and admitted to the violations. The court revoked the defendant's probation, executed the 18 months sentence for the terroristic threats and vacated the stay of imposition for the violation of the OFP, imposing a 36 month concurrent executed sentence, which is an upward departure from the presumptive guideline sentence. Departure was based on the aggravating factors that the victim suffered extreme adverse effect from the violation of the OFP and probation did not appear to deter the defendant. Blakely was issued the day after the defendant was sentenced. Defendant challenged his probation revocation and the imposition of the departure under the retroactive provisions of Blakely. United States v. Martin addressed retroactivity of a standard of review for sentencing procedures and compels courts to apply procedural changes to all sentences that are not final. The defendant's sentence is not final for retroactivity purposes and still subject to appeal. The court held that when a district court imposes a stay of imposition of a sentence, thereby precluding challenge to the sentence on direct review and subsequently vacates the stay of imposition and imposes an upward departure, Blakely will apply retroactively.*

Blakely Waiver Issues

State v. Hagen, *690 N.W.2d 155 (Minn. App. 2004). Case involved a defendant who pled guilty to Minn. Stat. § 609.342 subd. 1(g), sexual penetration of a victim under the age of 16 involving a significant relationship. Defendant lived in the same house as the 13 year old victim and there were numerous aggravating factors associated with the offense such as zone of privacy, particular vulnerability and great psychological harm, which the defendant does not deny. Defendant admitted the sexual penetration and stated his attorney discussed the "significant relationship" element with him. District court stated this is one of the worst child sex abuse cases it had seen and imposed an aggravated durational departure from the 144 month presumptive guideline sentence to 216 months. Defendant appealed his sentence on Blakely issues. Court ruled that Blakely has blurred the distinction between offense elements and sentencing factors. When the defendant stipulates to an element of an offense, it must be supported by an oral or written waiver of the defendant's right to a jury trial on that aggravating element. In Hagen, the admissions were made at the sentencing hearing rather than at the guilty/not guilty plea hearing where he could waive his right to a jury trial. The record must clearly indicate the aggravating factor was present in the underlying offense. Admissions must be effective and more than just not objecting to the aggravating factors.*

State v. Senske, *692 N.W. 2d 743 (Minn. App. 2005). Case involved a defendant who pled guilty to two counts of 1st degree criminal sexual conduct with no agreement on the sentence as part of the plea. Defendant admitted to multiple acts of penetration with stepdaughter and son, including blindfolding the son. District Court determined the defendant's actions warrant an*

upward durational departure due to the psychological harm to the victims, vulnerability due to age, the planning and manipulation involved in the act and death threats made to the victims. The court imposed 216 month consecutive sentences, representing a 50 percent increase over the presumptive guideline sentence. Defendant appealed his sentence on a Blakely issue and the imposition of consecutive sentences. The court ruled that even though the sentence to be imposed was not part of the plea agreement, the defendant nonetheless was not advised that the aggravating factors he admitted to could be used to impose an aggravated departure. Even though the defendant admitted to the aggravating factors, those admissions were not accompanied by a waiver of the right to a jury determination of the aggravating factors. The court further stated that the imposition of consecutive sentences did not violate Blakely principles since the consecutive sentences were based on the fact the offenses involved were "crimes against a person" and involved separate sentences for separate offenses.

D. Departures from the Guidelines: The sentence ranges provided in the Sentencing Guidelines Grids are presumed to be appropriate for the crimes to which they apply. Thus, the judge shall pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances to support a sentence outside the range on the grids. A sentence outside the applicable range on the grids is a departure from the sentencing guidelines and is not controlled by the guidelines, but rather, is an exercise of judicial discretion constrained by case law and appellate review. However, in exercising the discretion to depart from a presumptive sentence, the judge must disclose in writing or on the record the particular substantial and compelling circumstances that make the departure more appropriate than the presumptive sentence.

Furthermore, if an aggravated departure is to be considered, the judge must afford the accused an opportunity to have a jury trial on the additional facts that support the departure and to have the facts proved beyond a reasonable doubt. If the departure facts are proved beyond a reasonable doubt, the judge may exercise the discretion to depart from the presumptive sentence. In exercising that discretion, it is recommended that the judge pronounce a sentence that is 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 sentencing guidelines. Because departures are by definition exceptions to the sentencing guidelines, the departure factors set forth in II.D are advisory only, except as otherwise established by settled case law. When the conviction is for a criminal sexual conduct offense or offense in which the victim was otherwise injured, and victim injury is established in proving the elements of the crime, an aggravated durational departure is possible without a jury

determination of additional facts if the departure is based on the offender's prior history of a conviction for a prior criminal sexual conduct offense or an offense in which victim injury was established as an element of the offense.

Comment

II.D.01. *The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge 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 defendant has the right to a jury trial to determine whether or not aggravating factors are proved beyond a reasonable doubt.*

II.D.02. *Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.*

II.D.03. *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 guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges 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.*

II.D.04. *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 sentencing guidelines are supported. If a plea agreement involves a sentence departure and no other reasons are provided, there is little information available to provide for informed policy making or to ensure consistency, proportionality, and rationality in sentencing.*

Departures and their reasons highlight both the success and problems of the existing sentencing guidelines. When a plea agreement is made that involves a departure from the presumptive sentence, the court should cite the reasons that underlie the plea agreement or explain the reasons the negotiation was accepted.

1. Factors that should not be used as reasons for departure: The following factors should not be used as reasons for departing from the presumptive sentences provided in the Sentencing Guidelines Grids:

    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 exercise of constitutional rights by the defendant during the adjudication process.

Comment

II.D.101. *The Commission believes that sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income levels. 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--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 shall demonstrate that the departure is not based on any of the excluded factors.*

II.D.102. *In addition, the Commission determined that the severity of offenders' sanctions should not vary depending on whether or not they exercise constitutional rights during the adjudication process.*

II.D.103. *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 offense of conviction. Thus, 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.

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which 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 to the commissioner but not a mandatory minimum sentence, and either of the following exist:

            (a) The current conviction offense is at severity level I or II and the offender received all of his or her prior felony sentences during less than three separate court appearances; or

            (b) The current conviction offense is at severity level III or IV and the offender received all of his or her prior felony sentences during one court appearance.

        (5) Other substantial grounds exist which tend to excuse or

mitigate the offender's culpability, although not amounting to a defense.

(6) Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. §609.1055).

b. Aggravating Factors:

(1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.

(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 there is 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 are aggravating factors 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 are aggravating factors with respect to the offense:

(a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so; or

(b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

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

(d) the offender knowingly possessed a firearm during the commission of the offense; or

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

(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; or

(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).

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

(7) Offender is sentenced according to Minn. Stat. § 609.3455, subd. 3a (Mandatory sentence for certain engrained offenders).

(8) Offender is a "dangerous offender who commits a third violent crime" (See Minn. Stat. § 609.1095, subd. 2).

(9) Offender is a "career offender" (See Minn. Stat. § 609.1095, subd. 4).

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

(11) The offender intentionally selects the victim or the property against which the offense is 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's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense.

Comment

II.D.201. *The Commission provided a non-exclusive list of reasons which may be used as reasons for departure. The factors are intended to describe specific situations involving a small number of cases. The Commission rejected factors which were general in nature, and which 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 of factors which may be used as reasons for departure. 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 or not a person 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 on the terms of restitution payment.*

II.D.202. *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. At this time, the Commission believes that the judge is best able to distinguish these offenders and can depart from the guidelines accordingly.*

II.D.203. *An aggravated sentence would be appropriate when the current conviction is for a Criminal Sexual Conduct offense or for an offense in which the victim was injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or for an offense in which the victim was injured even if the prior felony offense had decayed in accordance with section II.B.1.f.*

II.D.204. *Special sentencing provisions were established by the legislature under Minn. Stat. § 609.3455, subd. 3a; 609.1095, subd. 2; and 609.1095, subd. 4, that are available to judges when sentencing certain sex offenders, "dangerous offenders," and "career offenders." The use of one of these sentencing provisions would constitute a departure under the sentencing guidelines and a judge must provide written reasons that specify that the requirements of the statute have been met.*

II.D.205. *The aggravating factor involving groups of three or more persons under section II.D.2.b.(10) cannot be used when an offender has been convicted under Minn. Stat. § 609.229, Crime Committed for Benefit of a Gang. See Section G. Convictions for Attempts,*

Conspiracies, and Other Sentence Modifiers for the presumptive sentence for persons convicted of Crime Committed for Benefit of a Gang, Minn. Stat. § 609.229, subd. 3 (a).

II.D.206. *The aggravating factor involving bias motivation under section II.D.2.b.(11) cannot be used when a person has been convicted under a statute that elevated the crime to a felony offense because of bias motivation, e.g., Minn. Stat. §§ 609.2231, subd. 4 (fourth-degree assault), 609.595, subd. 1a(a) (criminal damage to property); 609.749, subd. 3(1) (harassment/stalking). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once.*

Additionally, 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 victims are multiple and all of the same gender.

E. Mandatory Sentences: When an offender has been convicted of an offense with a mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment to the Commissioner of Corrections. The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute or the duration of the prison sentence provided in the appropriate cell of the Sentencing Guidelines Grids, whichever is longer.

First degree murder and sex offenders subject to Minn. Stat. § 609.3455, subdivision 2, which have mandatory life imprisonment sentences, are excluded from offenses covered by the sentencing guidelines.

When an offender is sentenced according to Minn. Stat. § 609.107, Mandatory Penalty for Certain Murderers, the statutory provision determines the presumptive sentence.

When an offender has been convicted of an offense with a mandatory minimum sentence under Minn. Stat. § 609.11, which would otherwise be a presumptive stayed sentence under the sentencing guidelines, the court on its own motion or on the motion of the prosecutor may sentence without regard to the mandatory minimum sentence. The presumptive disposition, however, is commitment to the Commissioner. A stay of imposition or execution of sentence, while provided for under Minn. Stat. § 609.11, subd. 8, constitutes a departure from the presumptive sentence and the judge must provide written reasons which specify the substantial

and compelling nature of the circumstances.

When an offender is sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum sentence for dangerous weapon involvement plus the mandatory minimum sentence for the second or subsequent controlled substance offense or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

When an offender is sentenced according to Minn. Stat. § 609.1095, subd. 3, the presumptive disposition is commitment to the Commissioner and 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.

When an offender is sentenced for first-degree (felony) driving while impaired, the court must impose a sentence of at least 36 months. The presumptive disposition is determined by the dispositional line on the Sentencing Guidelines Grid. For cases contained in cells outside of the shaded areas of the grid, the sentence should be executed. For cases contained in cells within the shaded areas of the grid, the sentence should be stayed unless the offender had a previous conviction, as defined by Minn. Stat. § 609.02 subd. 5, for a felony DWI; or as defined by Minn. Stat. § 169A.24 subd. 1 (3), for a criminal vehicular homicide or operation prior to commission of the current offense, in which case the presumptive disposition is commitment to the Commissioner of Corrections.

Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. When a court commits a person subject to one of these statutes to the custody of the Commissioner of Corrections, it shall provide that after the person has been released from prison, the Commissioner shall place the person on conditional release for the designated term. A person committed to prison for a sex offense or criminal sexual predatory conduct is subject to a ten-year conditional release term, unless the offense is a violation of M.S. § 609.3451 (fifth degree criminal sexual conduct). If the person was committed to prison for a violation of M.S. §§ 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 609.3453 (criminal sexual predatory conduct), and there is a previous or prior sex offense conviction, the person shall be

placed on conditional release for the remainder of the person's life, unless the current offense and prior conviction were both for violations of M.S. § 609.345 (fourth degree criminal sexual conduct). If both the current and prior convictions are for M.S. § 609.345 (fourth degree criminal sexual conduct), the conditional release period shall be for ten years. If a person who is subject to a life-with-the-possibility-of-release sentence is released, that offender is subject to conditional release for the remainder of his or her life. If a person is sentenced for failure to register as a predatory offender and the person was assigned a risk level III under M.S. § 244.052, the person shall be placed on conditional release for ten years. A person convicted of fourth degree assault against secure treatment facility personnel under M.S. § 609.2231, subdivision 3a, use of minors in a sexual performance under M.S. § 617.246, or a child pornography offense under M.S. § 617.247, is subject to a five-year conditional release term. If the person was committed to prison for a violation of M.S. §§ 617.246 (use of minors in a sexual performance) or 617.247 (possession or dissemination of child pornography), and there is a previous or prior conviction for either of these offenses or for a criminal sexual conduct offense, the person shall be placed on conditional release for ten years. Finally, a person sentenced to imprisonment for first degree (felony) driving while impaired is subject to five years of conditional release.

Comment

II.E.01. *The types of offenses that may involve a mandatory minimum sentence or a mandatory sentence include offenses involving dangerous weapons, a second or subsequent controlled substance offense, first degree (felony) driving while impaired, and certain 2nd and 3rd degree murder offenses when the offender has a prior conviction for a "heinous" offense as described by statute.*

II.E.02. *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 on the Sentencing Guidelines 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 of the Sentencing Guidelines Grid, whichever is longer. These crimes are ranked below 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 Minn. Stat. § 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 or the duration provided in the appropriate cell of the grid, whichever is longer. Therefore, for someone convicted of Assault in the Second Degree with no criminal history score, the guidelines presume a 21 month prison duration based on the appropriate cell of the grid found at severity level VI. 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 VIII which is the first severity level ranked completely above the dispositional line.

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 would not be commitment to the Commissioner unless the case falls above the dispositional line on the Sentencing Guidelines Grids. An example would be a conviction for simple possession of cocaine, a Fifth Degree Controlled Substance Crime. If the person has previously been convicted of a controlled substance crime, the mandatory minimum law would require at least six months incarceration which could be served in a local jail or workhouse.

II.E.03. *In 1981 the mandatory minimum provision dealing with the use of dangerous weapons in the commission of certain felonies (Minn. Stat. § 609.11) was amended to provide that the court shall 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 makes a finding that a dangerous weapon was involved, the mandatory minimum applies pursuant to Minn. Stat. § 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 judges as well. When a motion to sentence apart from the mandatory minimum is made by the prosecutor or the judge, it becomes legal to stay imposition or execution of sentence or to impose a lesser sentence than the mandatory minimum. When such a 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 greater. 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 greater, constitutes a mitigated durational departure. Written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the sentence selected is more appropriate, reasonable or equitable than the presumptive sentence are required.*

There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies; for example, Assault in the Second Degree, Drive-By Shootings, and Certain Persons Not to Have Firearms. 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 greater.

F. Concurrent/Consecutive Sentences: Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence which has not expired or been discharged, concurrent sentencing is presumptive. In certain situations consecutive sentences are presumptive; there are other situations in which consecutive sentences are permissive. These situations are outlined below. The use of consecutive sentences in any other case constitutes a departure from the guidelines and requires written reasons pursuant to Minn. Stat. § 244.10, subd. 2 and Section II.D of these guidelines.

When consecutive sentences are imposed, offenses are sentenced in the order in which they occurred.

For persons who, while on probation, parole, or incarcerated, pursuant to an offense committed on or before April 30, 1980, commit a new offense for which a consecutive sentence is imposed, service of the consecutive sentence for the current conviction shall commence upon the completion of any incarceration arising from the prior sentence.

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, or by an offender on supervised release, on conditional release, or on escape status from an executed prison sentence.

Consecutive sentences are presumptive under the above criteria 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. 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, however, is always commitment to the Commissioner of Corrections.

Under the circumstances above, it is presumptive for the sentence(s) to be consecutive to the sentence being served by the offender at the time the escape or other new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence except if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the

consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For each presumptive consecutive offense sentenced consecutive to another offense(s), a criminal history score of one, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing.

When an offender is sentenced for a felony DWI, a consecutive sentence is presumptive if the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence. The presumptive disposition for the felony DWI is based on the offender's location on the grid. If the disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on a criminal history score of one. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. If the disposition is commitment to prison, the requirement for consecutive sentencing does not apply (M.S. § 169A.28 subd. 1(b)).

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 on the list of offenses eligible for permissive consecutive sentences found in Section VI may be sentenced consecutively to a prior felony sentence for a crime listed in Section VI which has not expired or been discharged; or

2. Multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences found in Section VI 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, 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 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, 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.

For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. The purpose of this procedure is to count an individual's criminal history score only one time in the computation of consecutive sentence durations. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively, would include additional months as outlined in Section II.G and using the respective criminal history score appropriate for consecutive sentencing. The presumptive duration for each offense sentenced concurrently shall be based on the offender's criminal history as calculated by following the procedures outlined in Section II.B.

Comment

II.F.01. *Consecutive sentences are a more severe sanction because the intent of using them 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. Generally, the Commission has established criteria which permits, but does not require, the use of consecutive sentences in the instances listed in the guidelines.*

For felony convictions committed while an offender is serving, or on escape status from, an executed prison sentence, it is presumptive to impose the sentence for the current offense consecutive to the sentence the offender was serving at the time the new offense was committed. As defined in Minn. Stat. § 244.101, "executed prison sentence" includes both the term of imprisonment and period of supervised release. The guidelines create a presumption against the use of consecutive sentences in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.

In all cases the Commission suggests that judges consider carefully whether the purposes of the sentencing guidelines (in terms of punishment proportional to the severity of the offense and the criminal history) would be served best by concurrent rather than consecutive sentences.

II.F.02. *The order of sentencing when consecutive sentences are imposed by the same judge is to sentence in the order in which the offenses occurred. For persons given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by the severity level appropriate to the conviction offense at the zero criminal history column, or the mandatory minimum, whichever is greater.*
For each presumptive consecutive offense sentenced consecutive to another offense(s), the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column of the grids, or the mandatory minimum, whichever is greater. For persons sentenced under Minn. Stat. § 609.229, subd. 3 where there is a sentence for an

offense committed for the benefit of a gang, the presumptive duration for the underlying crime with the highest severity level if sentenced consecutively would include additional months as outlined under Section II.G. and using the respective criminal history score appropriate for consecutive sentencing.

The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The institutional records officer will aggregate the separate durations into a single fixed sentence, as well as aggregate the terms of imprisonment and the periods of supervised release. For example, if the judge executed a 44 month fixed sentence, and a 24 month fixed sentence to be served consecutively to the first sentence, the records officer has the authority to aggregate the sentences into a single 68 month fixed sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.

II.F.03. *The presumptive disposition for an escape from an executed sentence or a felony assault committed by an inmate serving an executed term of imprisonment is commitment to the Commissioner of Corrections. It is presumptive for sentences for these offenses to be consecutive to the sentence the inmate was serving at the time the new offense was committed. Consecutive sentences are also presumptive for a crime committed by an inmate serving, or on escape status from, an executed prison sentence if the presumptive disposition for the crime is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C.*

In certain situations a concurrent sentence would result in an offender serving longer in prison than a consecutive sentence and in such situations a concurrent sentence is presumptive. For example, an inmate has four months left to serve before release on the first offense. The new offense is a severity level IV crime and the inmate's criminal history score is five. If sentenced concurrently, the presumptive duration would be 27 months, the term of imprisonment would be 18 months and because the sentence runs concurrently with the first offense, the total time to be served would be 18 months. If the new offense were sentenced consecutively, the presumptive duration would be 15 months, the term of imprisonment would be 10 months and adding the 10 months to the four months left to serve on the first offense would equal 14 months or 4 months less than the time to be served under concurrent sentencing. In a situation like this example, concurrent sentencing would be presumptive.

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one, or the mandatory minimum, whichever is greater.

II.F.04. *The Commission's policy on permissive consecutive sentencing outline the criteria that are necessary to permit consecutive sentencing without the requirement to cite reasons for departure. Judges may pronounce consecutive sentences in any other situation by citing reasons for departure. Judges 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 II.D. of the guidelines.*

It is permissive for multiple current felony convictions for offenses on the eligible list to be sentenced consecutively to each other when the presumptive disposition for these offenses is commitment to the Commissioner of Corrections as determined under the procedures outlined in Section II.C. Presumptive Sentence. Consecutive sentencing is permissive under these circumstances even when the offenses involve a single victim involving a single course of conduct. However, consecutive sentencing is not permissive under these circumstances when

the court has given an upward durational departure on any of the current 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.

If the presumptive disposition for an escape conviction from a nonexecuted prison sentence is commitment to the Commissioner of Corrections, it is permissive for the sentence to be consecutive to the offense for which the offender was confined regardless of whether the other sentence is for a crime against the person. The presumptive duration for the escape is found at the zero criminal history column and the appropriate severity level. In addition to making the sentence for the escape offense consecutive to the sentence for which the offender was confined, it is also permissive to pronounce a sentence for any offense committed while on escape status that carries a presumptive disposition of commitment to the Commissioner of Corrections, consecutive to the sentence for the escape conviction or consecutive to the sentence for which the offender was confined.

Sentences for offenses committed while on escape status from an executed sentence which have presumptive dispositions of commitment to the Commissioner of Corrections are presumptive consecutive to the sentence being served by the offender at the time of the escape. In addition, it is permissive to sentence any offense committed while on escape status from an executed sentence consecutive to the escape.

II.F.05. *The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons 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 which 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 connected with the pre-guidelines offense.

II.F.06. *Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of $5,000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery in the First Degree with use of a gun and had a zero criminal history score, the presumptive sentence for the offense would be 48 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.*

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers: For persons convicted of attempted offenses or conspiracies to commit an offense, Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), Solicitation of Mentally Impaired Persons under Minn. Stat. § 609.493, or Aiding an Offender – Taking Responsibility for Criminal Acts under Minn. Stat. § 609.495, subd. 4, the presumptive sentence is determined by locating the Sentencing Guidelines Grids cell defined by the offender's criminal history score and the severity level of the completed or intended offense or the offense committed by the principal offender, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. § 152.096, in which event the presumptive sentence shall be that for the completed offense.

For persons convicted of attempted offenses or conspiracies to commit an offense with a mandatory minimum of a year and a day or more, the presumptive duration is the mandatory minimum or one-half the duration specified in the applicable Sentencing Guidelines Grids cell, whichever is greater. For persons convicted of an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree (M.S. § 609.342) or Criminal Sexual Conduct in the Second Degree (M.S. § 609.343, subd. 1(c), (d), (e), (f), and (h)), the presumptive duration is one-half of that found in the appropriate cell of the Sentencing Guidelines Grid or any mandatory minimum, whichever is longer. The Commission regards the provisions of M.S. 609.342 subd. 2(b) and 609.343 subd. 2(b) as statutorily created presumptive sentences, and not mandatory minimums.

For persons sentenced under Minn. Stat. § 609.714 (an offense committed in furtherance of terrorism), the presumptive sentence duration for the underlying offense is increased by fifty percent. The presumptive sentence is determined by locating the Sentencing Guidelines Grids cell defined by the offender's criminal history score and the severity level of the underlying crime.

For persons sentenced under Minn. Stat. § 609.3453 (criminal sexual predatory conduct), the presumptive sentence duration for the underlying offense, located in the Sentencing Guidelines Grid Cell defined by the offender’s criminal history score and the severity level of the underlying crime, is increased by twenty-five percent. If the person was convicted and sentenced for a sex offense before the commission of the present offense, the presumptive sentence duration for

the underlying offense is increased by fifty percent. Any partial months resulting from this calculation should be rounded down to the nearest half month.

Further, the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. § 609.185, or Conspiracy to Commit or Attempted First Degree Murder of an Unborn Child, Minn. Stat. § 609.2661, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVEL OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	**1**	**2**	**3**	**4**	**5**	**6 or More**
Conspiracy/Attempted Murder, 1st Degree	**180** *153-216*	**190** *161.5-228*	**200** *170-240*	**210** *178.5-240*[1]	**220** *187-240*[1]	**230** *195.5-240*[1]	**240** *204-240*[1]

[1] M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which 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, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

For persons sentenced under Minn. Stat. § 609.229, subd. 3(a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive disposition is always commitment to the Commissioner of Corrections due to the mandatory minimum under Minn. Stat. § 609.229, subd. 4. The presumptive duration is determined by the duration contained in the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, or the mandatory minimum, whichever is greater, plus an additional 12 months or an additional 24 months if the victim of the crime was under the age of eighteen years. If the underlying crime is an attempt, the presumptive duration includes an additional 6 months or an additional 12 months if the victim of the crime was under the age of eighteen years.

Any changes to presumptive sentences under this section are also applied to the upper and lower numbers of the sentencing range provided on the Sentencing Guidelines Grids.

Comment

II.G.01. *The presumptive sentence length for those convicted of attempted offenses or conspiracies to commit an offense is one-half the duration provided in the appropriate cell of the Sentencing Guidelines Grids for the completed offense, provided that no such sentence shall be less than one year and one day.*

II.G.02. *If the fixed presumptive sentence is an odd number, division by two will produce 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.

H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence: If the presumptive sentence duration given in the appropriate cell of the Sentencing Guidelines Grids exceeds the statutory maximum sentence for the offense of conviction, the statutory maximum sentence shall be the presumptive sentence.

Comment

II.H.01. *There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence.*

I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids: Minn. Stat. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment. Although the shaded areas of the grid do not display ranges, when a presumptive duration for 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.

III. Related Policies

A. Establishing Conditions of Stayed Sentences:

1. Method of Granting Stayed Sentences: When the appropriate cell of the Sentencing Guidelines Grids provide a stayed sentence, and when the judge chooses to grant that stay by means of a stay of execution, the duration of prison sentence shown in the appropriate cell is pronounced, but its execution is stayed. When the judge chooses to grant the stay by means of a stay of imposition, the duration of the prison sentence in the appropriate cell is not pronounced and the imposition of the sentence is stayed. The judge would then establish conditions which are deemed appropriate for the stayed sentence, including establishing a length of probation, which may exceed the duration of the presumptive prison sentence.

   The Commission recommends that stays of imposition be used as the means of granting a stayed sentence for felons convicted of lower severity offenses with 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

III.A.101. *When the presumptive sentence is a stay, the judge may grant the stay by means of either a stay of imposition or a stay of execution. The use of either a stay of imposition or stay of execution is at the discretion of the judge. 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 ought to be used for those convicted of less serious offenses and those with short criminal histories. Under current sentencing practices, judges use stays of imposition most frequently for these types of offenders.*

III.A.102. *When a judge grants a stayed sentence, the duration of the stayed sentence may exceed the presumptive sentence length indicated in the appropriate cell of the Sentencing Guidelines Grids, and may be as long as the statutory maximum for the offense of conviction. Thus, for an offender convicted of Theft over $5,000 (severity level III), with a criminal history score of 1, the duration of the stay could be up to ten years. The 13 month sentence shown in the guidelines is the presumptive sentence length and, if imposed, would be executed if (a) the judge departs from the dispositional recommendation and decides to execute the sentence, or (b) if the stay is later revoked and the judge decides to imprison the offender.*

2. Conditions of Stayed Sentences: The Commission has chosen not to develop specific guidelines relating to the conditions of stayed sentences. The Commission recognizes that there are several penal objectives to be considered in establishing conditions of stayed sentences, including, but not limited to, retribution, rehabilitation, public protection, restitution, deterrence, and public condemnation of criminal conduct. 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 development of principled standards for establishing conditions of stayed sentences requires that judges first consider the objectives to be served by a stayed sentence and, second, consider the resources available to achieve those objectives. When retribution is an important objective of a 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, and judges should consider the availability and adequacy of local jail or correctional facilities in establishing such sentences. The Commission urges judges to utilize the least restrictive conditions of stayed sentences that are consistent with the objectives of the sanction. When rehabilitation is an important objective of a stayed sentence, judges are urged to make full use of local programs and resources available to accomplish the rehabilitative objectives. 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. The Commission urges judges to make expanded use of restitution and community work orders as conditions of a stayed sentence, especially for persons with short criminal histories who are convicted of property crimes, although the use of such conditions in other cases may be appropriate. Supervised probation should continue as a primary condition of stayed sentences. To the extent that fines are used, the Commission urges the expanded use of day fines, which standardizes the financial impact of the sanction among offenders with different income levels.

Comment

III.A.201. *The judge may attach any conditions to a stayed sentence which are permitted by law and which he or she deems appropriate. The guidelines neither enlarge nor restrict the conditions that judges may attach to a stayed sentence. Laws 1978, Chapter 723 permits, but does not require, the Commission to establish guidelines covering conditions of stayed sentences. The Commission chose not to develop such guidelines during their initial guideline*

development effort. The Commission has provided some language in the above section of the guidelines which provides general direction in the use of conditions of stayed sentences.

III.A.202. *While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing judge to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states that 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 prior 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 decision to imprison an offender following a revocation of a stayed sentence should not be undertaken lightly and, in particular, should not be a reflexive reaction to technical violations of the conditions of the stay. Great restraint should be exercised in imprisoning those violating conditions of a stayed sentence who were convicted originally of low severity offenses or who have short prior criminal histories. Rather the Commission urges the use of more restrictive and onerous conditions of a stayed sentence, such as periods of local confinement. Less judicial forbearance is urged for persons violating conditions of a stayed sentence who were convicted of a more severe offense or who had a longer criminal history. Even in these cases, however, imprisonment upon a technical violation of the conditions of a stayed sentence should not be reflexive.

The Commission would view commitment to the Commissioner of Corrections following revocation of a stayed sentence to be justified when:

1. The offender has been convicted of a new felony for which the guidelines would recommend imprisonment; or

2. Despite prior use of expanded and more onerous conditions of a stayed sentence, the offender persists in violating conditions of the stay.

Comment

III.B.01. *The guidelines are based on the concept that the severity of the sanction ought to depend primarily on 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: Pursuant to Minn. Stat. § 609.145, subd. 2, and Minn. R. Crim. P.27.03, subd. 4(b), when a convicted felon is committed to the custody of the Commissioner of Corrections, the court shall assure that the record accurately reflects all time spent in custody in connection with the offense, including examinations under Minn. R. Crim. P. 20 or 27.03, subd.1(A), for the offense or behavioral incident for which the person is sentenced, which time shall be deducted by the Commissioner of Corrections from the sentence imposed by subtracting the time from the specified minimum term of imprisonment and if there is any remaining time, subtracting such time from the specified maximum period of supervised release. Jail credit shall be awarded based on the following criteria:

1. Jail credit for time spent in custody shall not turn on matters subject to manipulation by the prosecutor.

2. Jail credit shall not result in double credit when applied to consecutive sentences.

3. Jail credit shall reflect time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender is committed to the custody of the Commissioner of Corrections. Such credit is limited to time spent in jails, workhouses, and regional correctional facilities.

4. Jail credit shall be awarded at the rate of one day for each day served for time spent in confinement under Huber Law (Minn. Stat. § 631.425).

Comment

III.C.01. *In order to promote the goals of the sentencing guidelines, it is important to ensure that jail credit is consistently applied to reflect all time spent in custody in connection with the offense. 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 a person 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. The Commission believes that greater uniformity in the application of jail credit can be achieved by following the general criteria noted above in section III.C. Jail Credit.*

III.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. The purpose of this criteria is to ensure that if the intent of the court is to give concurrent sentences, the withholding of jail credit does not result in de facto consecutive sentences.*

III.C.03. *The Commission is equally concerned that if the intent of the court is to give consecutive sentences, the awarding of jail credit should not result in de facto concurrent sentences. Therefore, when applying jail credit to consecutive sentences, credit is only applied to the first sentence in order to avoid awarding double credit. In order to avoid de facto concurrent sentences when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in a prison or jail, no jail credit shall be awarded on the current offense.*

III.C.04. *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 to the Commissioner of Corrections. 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.*

Credit for time spent in custody as a condition of a stay of imposition or stay of execution is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should not be extended for time spent in residential treatment facilities or on electronic monitoring as a condition of a stay of imposition or stay of execution.

III.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. Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of one day for each day served.*

III.C.06. *In order to ensure that offenders are not penalized for inability to post bond, credit for time in custody shall 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. For offenders sentenced for offenses committed before August 1, 1993, credit for time in custody shall be computed by the Commissioner of Corrections after projected good time is subtracted from the executed sentence.*

Commission policy is that sentencing should be neutral with respect to the economic status of felons. When credit for time spent in custody is immediately deducted from the sentence, the incongruous result is that individuals who cannot post bond are confined longer than those who post bond.

D. Certified Juveniles: When a juvenile has been referred to the district court for trial as an adult pursuant to Minn. Stat. § 260B.125, the sentences provided in the sentencing guidelines apply with the same presumptive force as for offenders age 18 or over at the time of the commission of offenses.

E. Presentence Mental or Physical Examinations for Sex Offenders: Under the authority of Minn. R. Crim. P. 27.03, subd. 1(A), when an offender has been convicted under Minn. Stat. § 609.342, 609.343, 609.344, 609.345, or 609.365, or is convicted under section 609.17 of an attempt to commit an act proscribed by Minn. Stat. § 609.342 or 609.344, the Commission recommends that any state, local, or private agency that the court may deem adequate be ordered to make a physical or mental examination of the offender, as a supplement to the presentence investigation required by Minn. Stat. § 609.115.

F. Modifications: Modifications to the Minnesota Sentencing Guidelines and associated commentary will be applied to offenders whose date of offense is on or after the specified modification effective date. Modifications to the Commentary that relate to clarifications of existing policy will be applied to offenders sentenced on or after the specified effective date.

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IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	**1**	**2**	**3**	**4**	**5**	**6 or more**
Murder, 2nd Degree (intentional murder; drive-by-shootings)	**XI**	306 *261-367*	326 *278-391*	346 *295-415*	366 *312-439*	386 *329-463*	406 *346-480*[2]	426 *363-480*[2]
Murder, 3rd Degree *Murder, 2nd Degree (unintentional murder)*	**X**	150 *128-180*	165 *141-198*	180 *153-216*	195 *166-234*	210 *179-252*	225 *192-270*	240 *204-288*
Assault, 1st Degree *Controlled Substance Crime, 1st Degree*	**IX**	86 *74-103*	98 *84-117*	110 *94-132*	122 *104-146*	134 *114-160*	146 *125-175*	158 *135-189*
Aggravated Robbery, 1st Degree *Controlled Substance Crime, 2nd Degree*	**VIII**	48 *41-57*	58 *50-69*	68 *58-81*	78 *67-93*	88 *75-105*	98 *84-117*	108 *92-129*
Felony DWI	**VII**	36	42	48	54 *46-64*	60 *51-72*	66 *57-79*	72 *62-84*[2]
Controlled Substance Crime, 3rd Degree	**VI**	21	27	33	39 *34-46*	45 *39-54*	51 *44-61*	57 *49-68*
Residential Burglary *Simple Robbery*	**V**	18	23	28	33 *29-39*	38 *33-45*	43 *37-51*	48 *41-57*
Nonresidential Burglary	**IV**	12[1]	15	18	21	24 *21-28*	27 *23-32*	30 *26-36*
Theft Crimes (Over $5,000)	**III**	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)*	**II**	12[1]	12[1]	13	15	17	19	21 *18-25*
Sale of Simulated Controlled Substance	**I**	12[1]	12[1]	12[1]	13	15	17	19 *17-22*

Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the guidelines by law. See Guidelines Section II.E., Mandatory Sentences, for policy regarding those sentences controlled by law.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

[1] One year and one day

[2] M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which 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, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

Effective August 1, 2007

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

Offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will no longer earn good time. In accordance with Minn. Stat. § 244.101, offenders 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. This provision requires that the court 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 shall 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. The court's explanation is to be included in a written summary of the sentence.

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

SEX OFFENDER GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE		**0**	**1**	**2**	**3**	**4**	**5**	**6 or more**
CSC 1st Degree	**A**	144 *144-173*	156 *144-187*	168 *144-202*	180 *153-216*	234 *199-281*	306 *260-360*	360 *306-360*[2]
CSC 2nd Degree – (c)(d)(e)(f)(h)	**B**	90 *90-108*	110 *94-132*	130 *111-156*	150 *128-180*	195 *166-234*	255 *217-300*	300 *255-300*[2]
CSC 3rd Degree – (c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o)	**C**	48 *41-58*	62 *53-74*	76 *65-91*	90 *77-108*	117 *99-140*	153 *130-180*	180 *153-180*[2]
CSC 2nd Degree – (a)(b)(g) *CSC 3rd Degree – (a)(b)*[2] *(e)(f)* *Dissemination of Child Pornography (Subsequent or by Predatory Offender)*	**D**	36	48	60 *51-72*	70 *60-84*	91 *77-109*	119 *101-143*	140 *119-168*
CSC 4th Degree – (c)(d) (g)(h)(i)(j)(k)(l)(m)(n)(o) *Use Minors in Sexual Performance* *Dissemination of Child Pornography*[2]	**E**	24	36	48	60 51-72	78 *66-94*	102 *87-120*	120 *102-120*[2]
CSC 4th Degree – (a)(b)(e)(f) *Possession of Child Pornography (Subsequent or by Predatory Offender)*	**F**	18	27	36	45 *38-54*	59 *50-71*	77 *65-92*	84 *71-101*
CSC 5th Degree *Indecent Exposure* *Possession of Child Pornography* *Solicit Children for Sexual Conduct*[2]	**G**	15	20	25	30	39 *33-47*	51 *43-60*	60 *51-60*[2]
Registration Of Predatory Offenders	**H**	12[1] *12[1]-14*	14 *12[1]-17*	16 *14-19*	18 *15-22*	24 *20-29*	30 *26-36*	36 *31-43*

Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 are excluded from the guidelines, because by law the sentence is mandatory imprisonment for life. See Guidelines Section II.E., Mandatory Sentences, for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

[1] One year and one day

[2] M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which 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, Guidelines Sections II.H. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence and II.I. Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

Effective August 1, 2007

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

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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	50 2/3	25 2/3	360	240	120
78	52	26			

V. OFFENSE SEVERITY REFERENCE TABLE

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

XI	Adulteration - 609.687, subd. 3(1) Murder 2 (intentional murder; unintentional drive-by shootings) - 609.19, subd. 1 Murder 2 of an Unborn Child - 609.2662(1)
X	Fleeing a Peace Officer (resulting in death) – 609.487, subd. 4(a) Murder 2 (unintentional murder) - 609.19, subd. 2 Murder 2 of an Unborn Child - 609.2662(2) Murder 3 - 609.195(a) Murder 3 of an Unborn Child - 609.2663
IX	Assault 1 - 609.221 Assault 1 of an Unborn Child - 609.267 Controlled Substance Crime in the First Degree - 152.021 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) Importing Controlled Substances Across State Borders – 152.0261 Kidnapping (w/great bodily harm) - 609.25, subd. 2(2) Manslaughter 1 - 609.20(1), (2) & (5) Manslaughter 1 of an Unborn Child - 609.2664(1) & (2) Murder 3 - 609.195(b) Solicits, Promotes, or Receives Profit Derived from Prostitution; Individual Under 18 - 609.322, subd. 1 Tampering with Witness, Aggravated First Degree - 609.498, subd. 1b
VIII	Aggravated Robbery 1 – 609.245, subd. 1 Arson 1 - 609.561 Burglary 1 - 609.582, 1(b) & (c) Controlled Substance Crime in the Second Degree - 152.022 Criminal Abuse of Vulnerable Adult (great bodily harm) - 609.2325, subd. 3 (a) (2) Criminal Vehicular Homicide or Operation – 609.21, subd. 1a(a) Drive-By Shooting (toward a person or occupied motor vehicle or building) - 609.66, subd. 1e (b) Escape from Custody - 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 1 – 609.20 (3) & (4) Manslaughter 1 of an Unborn Child - 609.2664(3) Manslaughter 2 – 609.205 (1) & (5) Manslaughter 2 of an Unborn Child - 609.2665(1)

VII First Degree (Felony) Driving While Impaired – 169A.24

VI
Aggravated Robbery 2 – 609.245, subd. 2
Assault 2 - 609.222
Burglary 1 - 609.582, subd. 1(a)
Certain Persons Not to Have Firearms – 624.713, subd. 1 (b); 609.165, subd. 1b
Controlled Substance Crime in the Third Degree - 152.023
Discharge of Firearm at Occupied Transit Vehicle/Facility - 609.855, subd. 5
Explosive Device or Incendiary Device – 609.668, subd. 6
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 - 297D.09, subd. 1
Fleeing Peace Officer (great bodily harm) - 609.487, subd. 4(b)
Kidnapping (safe release/no great bodily harm) - 609.25, subd. 2(1)
Price Fixing/Collusive Bidding - 325D.53, subd. 1 (2) (a)
Theft over $35,000 - 609.52, subd. 2 (3), (4), (15), & (16) with 609.52, subd. 3 (1)

V
Arson 2 - 609.562
Burglary 2 - 609.582, subd. 2(a)(1)&(2), 2(b)
Check Forgery over $35,000 - 609.631, subd. 4 (1)
Criminal Vehicular Homicide or Operation – 609.21, subd. 1a(b)
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 (1) (i)
Harassment/Stalking (third or subsequent violations) – 609.749, subd. 4(b)
Harassment/Stalking (pattern of harassing conduct) - 609.749, subd. 5
Interference with Emergency Communications – 609.776
Manslaughter 2 - 609.205 (2), (3), & (4)
Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4)
Negligent Discharge of Explosive – 299F.83
Perjury - 609.48, subd. 4 (1)
Possession of Substances with Intent to Manufacture Methamphetamine – 152.0262
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)
Riot 1 - 609.71, subd. 1
Simple Robbery – 609.24
Solicits, Promotes, or Receives Profit Derived from Prostitution - 609.322, subd. 1a
Tampering with Witness in the First Degree - 609.498, subd. 1a

IV
Adulteration - 609.687, subd. 3 (2)
Assault 2 of an Unborn Child - 609.2671
Assault 3 - 609.223, subd. 1, 2, & 3
Assault 5 (3rd or subsequent violation) - 609.224, subd. 4
Bribery - 609.42; 90.41; 609.86
Bring Contraband into State Prison - 243.55

Bring Dangerous Weapon into County Jail - 641.165, subd. 2 (b)
Burglary 2 - 609.582, subd. 2(a)(3)&(4)
Burglary 3 - 609.582, subd. 3
Controlled Substance Crime in the Fourth Degree - 152.024
Criminal Abuse of Vulnerable Adult (substantial bodily harm) – 609.2325, subd. 3 (a) (3)
Domestic Assault - 609.2242, subd. 4
Domestic Assault by Strangulation – 609.2247
False Imprisonment (substantial bodily harm) - 609.255, subd. 3
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/Stalking (aggravated violations) - 609.749, subd. 3(a),(b)
Harassment/Stalking (2nd or subsequent violation) - 609.749, subd. 4(a)
Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2
Malicious Punishment of Child (2nd or subsequent violation) - 609.377, subd. 3

IV

Malicious Punishment of Child (bodily harm) – 609.377, subd. 4
Malicious Punishment of Child (substantial bodily harm) - 609.377, subd. 5
Negligent Fires - 609.576, subd. 1 (1)
Perjury - 300.61; & 609.48, subd. 4 (2)
Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (second or subsequent violations) – 609.526
Receiving Stolen Property (firearm) – 609.53
Security Violations (over $2,500) – 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3 (a) & (b)
Sports Bookmaking – 609.76, subd. 2
Terroristic Threats - 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 (1)
Use of Drugs to Injure or Facilitate Crime - 609.235
Violation of a Domestic Abuse No Contact Order – 518B.01, subd. 22(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

Anhydrous Ammonia (tamper/theft/transport) – 152.136
Arson 3 - 609.563
Bringing Stolen Goods into State (over $5,000) – 609.525
Check Forgery (over $2,500) - 609.631, subd. 4 (2)
Coercion - 609.27, subd. 1 (1)
Coercion ($2,500, or more) – 609.27, subd. 1 (2), (3), (4), & (5)
Computer Damage (over $2,500) – 609.88
Computer Theft (over $2,500) – 609.89

III

Criminal Vehicular Homicide or Operation – 609.21, subd. 1a(c)
Damage or Theft to Energy Transmission, Telecommunications – 609.593
Damage to Property – 609.595, subd. 1 (1)
Damages; Illegal Molestation of Human Remains; Burials; Cemeteries – 307.08, subd. 2
Dangerous Smoking – 609.576, subd. 2
Dangerous Trespass, Railroad Tracks – 609.85(1)
Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2; 624.713, subd. 1 (a)

Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (a) (2)
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 – 609.485, subd. 4 (a) (5)
Escape from Custody - 609.485, subd. 4 (a) (1)
False Imprisonment – 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 Silencer (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
Methamphetamine Crimes Involving Children and Vulnerable Adults – 152.137
Motor Vehicle Use Without Consent – 609.52, subd. 2 (17)

III

Obstructing Legal Process, Arrest, Firefighting, or Ambulance Service Personnel Crew - 609.50, subd. 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.22, subd. 1; 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 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 (8)
Unauthorized Presence at Camp Ripley - 609.396, subd. 2

Accidents - 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, with previous conviction) – 609.525
Cellular Counterfeiting 1 – 609.894, subd. 4
Check Forgery ($251 - $2,500) - 609.631, subd. 4 (3) (a)
Coercion ($301 - $2,499) - 609.27, subd. 1 (2), (3), (4), & (5)

II

Computer Damage ($2,500, or less) – 609.88
Computer Theft ($2,500, or less) – 609.89
Controlled Substance in the Fifth Degree – 152.025
Counterfeited Intellectual Property - 609.895, subd. 3 (a)
Damage to Property - 609.595, subd. 1 (2), (3), & (4)

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 Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics – 297D.09, subd. 1
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 Silencer - 609.66, subd. 1a (a) (1)
Furnishing a Dangerous Weapon - 609.66, subd. 1c
Furnishing Firearm to Minor – 609.66, subd. 1b

II

Gambling Regulations - 349.2127, subd. 1-6; 349.22, subd. 4
Identity Theft – 609.527, subd. 3 (3)
Mail Theft – 609.529
Negligent Fires (damage $2,500, or more) - 609.576, subd. 1 (3)(iii)
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 2 - 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
Terroristic Threats - 609.713, subd. 2
Theft Crimes - $5,000, or less (*See 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)
Wildfire Arson - 609.5641, subd. 1

Accidents - 169.09, subd. 14 (a) (2)
Assault 4 - 609.2231, subd. 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)
Assaults Motivated by Bias - 609.2231, subd. 4 (b)
Aiding Offender to Avoid Arrest - 609.495, subd. 1

I

Bullet-Resistant Vest During Commission of Crime – 609.486
Cable Communication Systems Interference - 609.80, subd. 2
Cellular Counterfeiting 2 - 609.894, subd. 3
Certification for Title on Watercraft - 86B.865, subd. 1
Check Forgery ($250, or less) - 609.631, subd. 4 (3) (b)
Child Neglect/Endangerment - 609.378
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 Penalties Regarding the Activities of Corporations – 300.60
Criminal Use of Real Property (Movie Pirating) – 609.896
Dangerous Weapons on School Property - 609.66, 1d(a)
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 from Custody - 609.485, subd, 4 (a) (2)
Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols – 297D.09, subd. 1
Failure to Affix Stamp on Schedule IV Substances – 297D.09, subd. 1
Failure to Appear in Court - 609.49; 588.20, subd. 1
False Declaration - 256.984
False Information - Certificate of Title Application - 168A.30
Financial Transaction Card Fraud - 609.821, subd. 2 (3) & (4)
Fleeing A Peace Officer - 609.487, subd. 3
Forgery - 609.63; and Forgery Related Crimes (*See Forgery Related Offense List*)
Fraudulent Drivers' Licenses and Identification Cards – 609.652
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, subd. 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
Sale of Simulated Controlled Substance – 152.097
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
Terroristic Threats - 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 – Chapter 201, 203B, & 204C

I

U N R A N K E D

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
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

Corrupting Legislator – 609.425
Counterfeiting of Currency – 609.632
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 – 624.74
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.07, subd. 2
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.03; 82A.13; 82A.25
Service Animal Providing Service – 343.21, subd. 9 (e) (g)
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) (f) (h)
Treason – 609.385
Unauthorized Computer Access – 609.891
Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking – 609.283
Unlawful Transfer of Sounds; Sales – 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) (iii); 626A.26, subd. 2 (1) (ii)

UNRANKED

A

Criminal Sexual Conduct 1 - 609.342

B

Criminal Sexual Conduct 2 - 609.343 subd. 1 (c) (d) (e) (f) (h)

C

Criminal Sexual Conduct 3 - 609.344 subd. 1 (c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o)

D

Criminal Sexual Conduct 2 - 609.343 subd. 1 (a) (b) (g)
Criminal Sexual Conduct 3 - 609.344 subd. 1 (a) (b) (e) (f)
Dissemination of Child Pornography (subsequent or by predatory offender) - 617.247 subd. 3

E

Criminal Sexual Conduct 4 - 609.345 subd. 1 (c) (d) (g) (h) (i) (j) (k) (l) (m) (n) (o)
Use Minors in Sexual Performance - 617.246 subd. 2, 3, 4
Dissemination of Child Pornography - 617.247 subd. 3

F

Criminal Sexual Conduct 4 - 609.345 subd. 1 (a) (b) (e) (f)
Possession of Child Pornography (subsequent or by predatory offender) - 617.247 subd. 4

G

Criminal Sexual Conduct 5- 609.3451 subd. 3
Solicitation of Children to Engage in Sexual Conduct – 609.352, subd. 2
Solicitation of Children to Engage in Sexual Conduct (Internet or computer) – 609.352, subd. 2a
Indecent Exposure - 617.23 subd. 3
Possession of Child Pornography – 617.247 subd. 4

H

Failure to Register as a Predatory Offender – 243.166 subd. 5(b) (c)

VI. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

Statute Number	Offense Title
152.021, subd. 2a(a)	Manufacture any amount of Methamphetamine
152.022, subd. 1 (5)	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- Resulting in Death
169.09, subd. 14(a)(2)	Accidents- Great Bodily Harm
169A.24, subd. 1 (1)	First Degree DWI – 4 or more w/in 10 years
169A.24, subd. 1 (2)	First Degree DWI – 2nd or subsequent
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
518B.01, subd. 22(d)	Violation of a Domestic Abuse No Contact Order
609.185	Murder in the First Degree
609.185	Conspiracy/Attempted Murder in the First Degree
609.19	Murder in the Second Degree
609.195	Murder in the Third Degree
609.20	Manslaughter in the First Degree
609.205	Manslaughter Second Degree
609.21, subd. 1a(a)	Criminal Vehicular Homicide
609.21, subd. 1a(b)	Criminal Vehicular Operation (Great Bodily Harm)
609.21, subd. 1a(c)	Criminal Vehicular Operation (Substantial Bodily Harm)
609.215	Aiding Suicide
609.221	Assault 1
609.222	Assault 2 - Dangerous Weapon
609.223	Assault 3
609.2231	Assault 4
609.224, subd. 4	Assault 5 - 3rd or subsequent violation
609.2241	Knowing Transfer of Communicable Disease

Statute Number	Offense Title
609.2242, subd. 4	Domestic Assault
609.2245	Female Genital Mutilation
609.2247	Domestic Assault by Strangulation
609.228	Great Bodily Harm - 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)
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245, subd. 1	Aggravated Robbery 1
609.245, subd. 2	Aggravated Robbery 2
609.25	Kidnapping
609.255	False Imprisonment
609.2661	Consp./At. Murder I of Unborn Child
609.2662	Murder 2 of an Unborn Child
609.2663	Murder 3 of an Unborn Child
609.2664	Manslaughter 1 of an Unborn Child
609.2665	Manslaughter 2 of an Unborn Child
609.267	Assault 1 of an Unborn Child
609.2671	Assault 2 of an Unborn Child
609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.282	Labor Trafficking
609.322, subd. 1	Solicit, Promote, or Profit from Prost. Under 18
609.322, subd. 1a	Solicit, Promote, or Profit from Prost. (No Age Limit)
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 1
609.343, subd. 1	Criminal Sexual Conduct 2
609.344, subd. 1	Criminal Sexual Conduct 3
609.345, subd. 1	Criminal Sexual Conduct 4
609.3451, subd. 3	Criminal Sexual Conduct 5
609.3453	Criminal Sexual Predatory Conduct

Statute Number	Offense Title
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. 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 First Degree
609.498, subd. 1b	Tampering with a Witness, Aggravated First Degree
609.527	Identity Theft
609.561	Arson in the First Degree
609.582, subd. 1(a)	Burglary First Degree - of Occupied Dwelling
609.582, subd. 1(b)	Burglary First Degree with Dangerous Weapon
609.582, subd. 1(c)	Burglary First Degree with Assault
609.582, subd. 2(a)(1)	Burglary Second Degree – Dwelling
609.582, subd. 2(a)(2)	Burglary Second Degree – Bank
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)
609.594, subd.2	Damage to Prop.-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 1
609.712	Real/Simulated Weapons of Mass Destruction
609.713, subd. 1	Terroristic Threats-Violence Threat/Evacuation
609.713, subd. 2	Terroristic Threats-Bomb Threat
609.713, subd. 3(a)	Terroristic Threats-Replica Firearm
609.714, subd. 2	Crimes Committed in Furtherance of Terrorism

Statute Number	Offense Title
609.748, subd. 6(d)	Violation of Harassment Restraining Order
609.749, subd. 3	Harassment/Stalking (Aggravated Violations)
609.749, subd. 4	Harassment/Stalking (Subsequent Violations)
609.749, subd. 5	Harassment/Stalking (Pattern of Conduct)
609.855, subd. 2(c)(1)	Interference with Transit Operator
609.855, subd. 5	Discharge Firearm at Occup. Tran. Vehicle/Facility
617.23, subd. 3	Indecent Exposure
617.246, subd. 2	Use of Minors in Sexual Performance Prohibited
617.246, subd. 3	Operation/Owner-Use of Minors in Sexual Performance
617.246, subd. 4	Dissemination-Use of Minors in Sexual Performance
617.247, subd. 3(a)	Dissemination of Pictorial Representations of Minors
617.247, subd. 3(b)	Dissemination by Predatory Offender
617.247, subd. 4(a)	Possession of Pictorial Representations of Minors
617.247, subd. 4(b)	Possession by Predatory Offender
624.732, subd. 2	Intentional Release of Harmful Substance
624.74	Metal Penetrating Bullets

Theft Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES ($5,000 or less and over $5,000) in the Offense Severity Reference Table.

Altering Serial Number
609.52, subd. 2(10) & (11)

Defeating Security on Personalty
609.62

Defeating Security on Realty
609.615

Defrauding Insurer
609.611

Diversion of Corporate Property
609.52, subd. 2(15) & (16)

Failure to Pay Over State Funds
609.445

False Declaration of Claim
471.392

False Representations
268.182

Federal Food Stamp Program
393.07, subd. 10

Fraud in Obtaining Credit
609.82

Medical Assistance Fraud
609.466

Non-payment for Improvement (Proceeds of Payments;
Acts Constituting Theft)
514.02, subd. 1(b)

Permitting False Claims Against Government
609.455

Presenting False Claims to Public Officer or Body
609.465

Receiving Stolen Property
609.53
Refusing to Return Lost Property

609.52, subd. 2(6)

Taking Pledged Property
609.52, subd. 2(2)

Temporary Theft
609.52, subd. 2(5)

Theft
609.52, subd. 2(1)

Theft by Check
609.52, subd. 2(3) (i)

Theft by False Representation
609.52, subd. 2(3) (ii), (iii), (iv), & (v)

Theft by Trick
609.52, subd. 2(4)

Theft of Cable TV Services
609.52, subd. 2(12)

Theft of Leased Property
609.52, subd. 2(9)

Theft of Public Funds
609.52

Theft of Services
609.52, subd. 2(13)

Theft of Telecommunications Services
609.52, subd. 2(14)

Theft from Coin Operated Machines
609.52, subd. 2(7)

Workers Compensation Fraud
176.178

Wrongfully Obtaining Assistance
256.98

Forgery Related Offense List

It is recommended that the following property crimes be treated similarly. This is the list cited for the FORGERY and FORGERY RELATED CRIMES in the Offense Severity Reference Table.

Altering Livestock Certificate
35.824

Altering Packing House Certificate
226.05

Destroy or Falsify Private Business Record
609.63, subd. 1(5)

Destroy or Falsify Public Record
609.63, subd. 1(6)

Destroy Writing to Prevent Use at Trial
609.63, subd. 1(7)

False Bill of Lading
228.45; 228.47; 228.49; 228.50; 228.51

False Certification by Notary Public
609.65

False Information - Certificate of Title Application
168A.30

False Membership Card
609.63, subd. 1(3)

False Merchandise Stamp
609.63, subd. 1(2)

Fraudulent Statements
609.645

Obtaining Signature by False Pretense
609.635

Offer Forged Writing at Trial
609.63, subd. 2

Use False Identification
609.63, subd. 1(1)

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Misdemeanor and Gross Misdemeanor Offense List

The following misdemeanors and gross misdemeanors will be used to compute units in the criminal history score. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.

Arson in the Fourth Degree
609.5631

Assault in the Fourth Degree
609.2231, subd. 1, 2a, 4, 5, 6, & 7

Assault in the Fifth Degree
609.224

Burglary in the Fourth Degree
609.582

Carrying Pistol
624.714

Carrying a Pistol While Under the Influence of Alcohol or a Controlled Substance
624.7142, subd. 6(a)(b)

Certain Persons Not to Possess Firearms
624.713, subd. 2

Check Forgery
609.631

Computer Encryption
609.8912

Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility)
641.165

Contributing to Status as a Juvenile Petty Offender or Delinquency
260B.425

Counterfeiting of Currency
609.632

Criminal Abuse of Vulnerable Adult (bodily harm)
609.2325, subd. 3 (a) (4)

Criminal Sexual Conduct 5th Degree
609.3451

Criminal Vehicular Homicide or Operation (bodily harm)
609.21, subd. 1a(d)

Damage to Property
609.595

Dangerous Weapons
609.66

Dealers in Scrap Metal; Records, Reports, and Registration
325E.21

Disruption of Funeral Services
609.501

Domestic Assault
609.2242, subd. 1 & 2

Facilitating Access to a Computer Security System (gross misdemeanor)
609.8913

Fleeing a Police Officer
609.487

Furnishing Liquor to Persons Under 21
340A.503

Fraudulent or Improper Financing Statements
609.7475

Harassment/Stalking
609.749, subd. 2 & 8

Indecent Exposure
617.23

Interference with Emergency Calls and Communications (gross misdemeanor)
609.78

Interference with Privacy
609.746

Letter, Telegram, or Package; Opening; Harassment
609.795

Malicious Punishment of a Child
609.377

Obscene or Harassing Telephone Calls
609.79

Overworking or Mistreating Animals (second or subsequent torture or cruelty)
343.21, subd. 9(a)

Possession of Small Amount of Marijuana in Motor Vehicle
152.027, subd. 3

Predatory Offender Carrying a Weapon
624.714, subd. 24

Receiving Stolen Property
609.53

Registration of Predatory Offenders
243.166, subd. 5

Theft
609.52, subd. 2(1)

Torture or Cruelty to Pet or Companion Animal (substantial bodily harm)
343.21, subd. 9(b)

Trespass (gross misdemeanor)
609.605

Unauthorized Computer Access
609.891

Violation of Harassment Restraining Order
609.748

Violating an Order for Protection or Domestic Abuse No Contact Order
518B.01; subd. 14 & 22

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DEFINITION OF TERMS

Community Work Orders are a form of restitution. They are services to be performed by the offender to the community at large for a specified period of time as directed by the judge. For example, a lawyer may be directed to provide one day per week of free legal services to the community for a period of five years; or a youth may be directed to rake leaves and/or shovel snow two days per week for the elderly in the community for a period of one year.

Day Fines are a monetary penalty assessed on an equality formula determined by the seriousness of the offense and the offender's financial status - e.g., a burglary conviction may be assigned a value of "50 day fines"; the annual income of an offender with earnings of $20,000 would be reduced to a 'one-tenth of one percent' per diem figure of $20, and would be assessed a "day fine" penalty of $1,000, whereas an offender with annual earnings of $10,000, based on the same formula, would be assessed a penalty of $500.

Departures from the presumptive fixed sentence occur when the judge gives a sentence that differs from that provided in the Sentencing Guidelines Grids. When substantial and compelling aggravating or mitigating circumstances exist, the judge may depart from the presumptive sentence and provide any sentence authorized by law. When departing from the presumptive sentence, the judge must provide written reasons which articulate the substantial and compelling circumstances, and which demonstrate why the sentence given is more appropriate or fair than the presumptive sentence.

Executed Sentence means the total period of time for which an inmate is committed to the custody of the Commissioner of Corrections.

Good Time will reduce the term of imprisonment one day for every two days of good behavior for those committed to the Commissioner of Corrections following conviction of crimes which occurred on or after May 1, 1980 and prior to August 1, 1993. Good time earned accrues to a period of supervised release. Earned good time is vested, and cannot be taken away for misconduct. Earning of future good time may be restricted upon conviction for disciplinary violations promulgated by the Commissioner of Corrections.

Presumptive Fixed Sentences are those sentences provided in the sentencing guidelines and the Sentencing Guidelines Grids. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics. They are fixed because there is no discretionary release authority.

Stay of Imposition/Stay of Execution. There are two steps in sentencing: the imposition of a sentence, and the execution of the sentence which was 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 stayed sentence may be accomplished by either a stay of imposition or a stay of execution.

If a stay of imposition is granted, the imposition (or pronouncement) of a prison sentence is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions until that date, the case is discharged, and for civil purposes (employment applications, etc.) the offender has a record of a misdemeanor rather than a felony conviction.

If a stay of execution is granted, a prison sentence is pronounced, but the execution (transfer to the custody of the Commissioner of Corrections) is delayed to some future date, provided that until that date the offender comply with conditions established by the court. If the offender does comply with those conditions, the case is discharged, but the offender continues to have a record of a felony conviction.

Supervised Release is a period of mandatory community supervision following the end of the term of imprisonment for offenders committed to the custody of the Commissioner of Corrections for offenses occurring on or after May 1, 1980. For offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993, the period of supervised release is defined by Minn. Stat. § 244.101 to be one-third of the total executed sentence pronounced by the court. For offenders sentenced for crimes committed on or after May 1, 1980 and prior to August 1, 1993, the period of supervised release equals the amount of good time earned. The Commissioner of Corrections establishes conditions which the offender must obey during supervised release, and if those conditions are violated, the Commissioner of Corrections may revoke the supervised release and return the offender to prison for a period not to exceed the time left on the sentence.

Term of Imprisonment is defined differently for offenders who commit their offense prior to August 1, 1993 and those who commit their offense on or after that date. For offenders who are committed to the Commissioner of Corrections for crimes occurring on or after August 1, 1993, the term of imprisonment is defined by Minn. Stat. § 244.101 as two-thirds of the total executed sentence. For offenders who are committed to the Commissioner of Corrections for crimes occurring on or after May 1, 1980 and prior to August 1, 1993, term of imprisonment is the length of the prison sentence reduced by earned good time. When such an offender is committed, the sentence and the term of imprisonment are the same; as the offender earns good time, the sentence remains the same, but the term of imprisonment is shortened by the amount of good time earned.

NUMERICAL REFERENCE OF FELONY STATUTES

This statutory felony offense listing is for convenience in cross-referencing to the Offense Severity Table; it is not official nor is it intended to be used in place of the Offense Severity Reference Table.

STATUTE	OFFENSE	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.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation (over $2,500)	4
80A.22 subd. 1 or 80B.10 subd. 1 or 80C.16 subd. 3(a)(b)	Securities Violation ($2,500, or less)	3
82A.03; 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
145.412	Abortion	unranked
145B.105	Forced Execution of a Declaration	unranked
152.021	Controlled Substance Crime 1	9
152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	9
152.022	Controlled Substance Crime 2	8
152.023	Controlled Substance Crime 3	6 *
152.024	Controlled Substance Crime 4	4
152.025	Controlled Substance Crime 5	2

* See Section II. C., Presumptive Sentence, to determine the presumptive disposition.

STATUTE	OFFENSE	SEVERITY LEVEL
152.0261	Importing Controlled Substances Across State Borders	9
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	5
152.097	Sale of Simulated Controlled Substance	1
152.136	Anhydrous Ammonia (tamper/theft/transport)	3
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	3
168A.30	False Information - Certificate of Title Application	1
169.09 subd. 14(a)(1)	Accidents- Resulting in Death	2
169.09 subd. 14(a)(2)	Accidents- Great Bodily Harm	1
169A.24	First Degree (Felony) Driving While Impaired	7 *
176.178	Workers Compensation Fraud (over $5,000)	3
176.178	Workers Compensation Fraud ($5,000, or less)	2
201, 203B, 204C (Chapters)	Voting Violations	1
227.50	Issuing a Receipt for Goods One Does Not Have	unranked
227.52	Issuing a Second Receipt w/out “Duplicate” On It	unranked
228.45, 47, 49, 50, 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 (2^{nd} 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	False Representations (over $5,000)	3

* See Section II. C., Presumptive Sentence, to determine the presumptive disposition.

STATUTE	OFFENSE	SEVERITY LEVEL
268.182	False Representations ($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	6
297D.09 subd. 1	Failure to Affix Stamp on Hallucinogens or PCP (Angel Dust), incl. LSD	6
297D.09 subd. 1	Failure to Affix Stamp on Heroin	6
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I and II Narcotics	6
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non Narcotics	2
297D.09 subd. 1	Failure to Affix Stamp on Marijuana/Hashish/ Tetrahydrocannabinols	1
297D.09 subd. 1	Failure to Affix Stamp on Schedule IV Substance	1
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.07 subd. 2	Pipeline Safety	unranked
300.60	Activities of Corporations	1
300.61	False Statement by Corporate Officer (perjury)	4

STATUTE	OFFENSE	SEVERITY LEVEL
307.08 subd. 2	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 Transfer of Sounds; Sales	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)(f)(h)	Torture or Cruelty to Pet or Companion Animal	unranked
343.21, subd. 9(e)(g)	Service Animal Providing Service	unranked
343.31	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
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
518B.01 subd. 22(d)	Violation of a Domestic Abuse No Contact Order	4
588.20 subd. 1	Failure to Appear in Court	1
609.165 subd. 1b	Certain Persons Not to Have Firearms	6
609.19 subd. 1	Murder 2 (intentional murder; unintentional	11

STATUTE	OFFENSE	SEVERITY LEVEL
	drive-by-shootings)	
609.19 subd. 2	Murder 2 (unintentional murder)	10
609.195(a)	Murder 3	10
609.195(b)	Murder 3	9
609.20(1), (2) & (5)	Manslaughter 1	9
609.20(3) & (4)	Manslaughter 1	8
609.205(1) & (5)	Manslaughter 2 - Culpable Negligence	8
609.205(2), (3) & (4)	Manslaughter 2 - Hunting Accident	5
609.21 subd. 1a(a)	Criminal Vehicular Homicide or Operation (Death)	8
609.21 subd. 1a(b)	Criminal Vehicular Homicide or Operation (Great Bodily Harm)	5
609.21 subd. 1a(c)	Criminal Vehicular Homicide or Operation (Substantial Bodily Harm)	3
609.215	Aiding Suicide	unranked
609.221	Assault 1 (Great Bodily Harm)	9
609.222	Assault 2 (Dangerous Weapon)	6
609.223 subd. 1	Assault 3 (Substantial Bodily Harm)	4 *
609.223 subd. 2	Assault 3 (Bodily Harm, Pattern of Child Abuse)	4
609.223 subd. 3	Assault 3 (Bodily Harm, Victim Under 4)	4
609.2231 subd. 1	Assault 4 (Bodily Harm, Peace Officer)	1
609.2231 subd. 2	Assault 4 (Bodily Harm, Firefighters)	1
609.2231 subd. 3	Assault 4 (Bodily Harm, Corrections Employee)	1 *
609.2231 subd. 3a	Assault 4 (Bodily Harm, Secure Treatment Facility Personnel)	1
609.2231 subd. 4 (b)	Assaults Motivated by Bias	1
609.224 subd. 4	Assault 5 (3rd or subsequent violation)	4
609.2241	Knowing Transfer of Communicable Disease	see note[1]

* See Section II. C., Presumptive Sentence, to determine the presumptive disposition for a felony assault committed by an inmate serving an executed term of imprisonment.

STATUTE	OFFENSE	SEVERITY LEVEL
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 (Distribution of Drugs)	8
609.229 subd. 3 (a)	Crime Committed for Benefit of Gang	see note[2]
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 Vul. Adult (Great Bodily Harm)	8
609.2325 subd. 3(a)(3)	Criminal Abuse of Vul. Adult (Subst. Bodily Harm)	4
609.2335	Financial Exploitation of Vul. Adult (over $5,000)	5
609.2335	Financial Exploitation of Vul. 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 1	8
609.245 subd. 2	Aggravated Robbery 2	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	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

[1] See Section II.A., Offense Severity, to determine the presumptive sentence. See *Comment II.A.03.* for additional information on determining the presumptive sentence.

[2] See Section II.A., Offense Severity, and II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment II.A.03.* for additional information on determining the presumptive sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
609.2662(1)	Murder 2 of an Unborn Child	11
609.2662(2)	Murder 2 of an Unborn Child	10
609.2663	Murder 3 of an Unborn Child	10
609.2664(1) & (2)	Manslaughter 1 of an Unborn Child	9
609.2664 (3)	Manslaughter 1 of an Unborn Child	8
609.2665 (1)	Manslaughter 2 of an Unborn Child	8
609.2665 (2),(3),&(4)	Manslaughter 2 of an Unborn Child	5
609.267	Assault 1 of an Unborn Child	9
609.2671	Assault 2 of an Unborn Child	4
609.268 subd. 1	Death of an Unborn Child in Comm. of Crime	9
609.268 subd. 2	Injury of an Unborn Child in Comm. of Crime	4
609.27 subd. 1 (1)	Coercion (Threat Bodily Harm)	3
609.27 subd. 1(2)(3)(4)(5)	Coercion (Prop. Value over $2,500)	3
609.27 subd. 1(2)(3)(4)(5)	Coercion (Prop. 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	Solicits, Promotes, or Receives Profit Derived from Prostitution; Indiv. Under 18	9
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution	5
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

STATUTE	OFFENSE	SEVERITY LEVEL
609.342	Criminal Sexual Conduct 1	A
609.343 subd.1(a)(b)(g)	Criminal Sexual Conduct 2	D
609.343 subd.1(c)(d)(e) (f)(h)	Criminal Sexual Conduct 2	B
609.344 subd. 1(a)	Criminal Sexual Conduct 3 (By definition perpetrator must be a juvenile)	D
609.344 subd. 1(b)(e)(f)	Criminal Sexual Conduct 3	D
609.344 subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 3	C
609.345 subd. 1(a)	Criminal Sexual Conduct 4 (By definition perpetrator must be a juvenile)	F
609.345 subd. 1(b)(e)(f)	Criminal Sexual Conduct 4	F
609.345 subd. 1(c)(d)(g) (h)(i)(j)(k)(l)(m)(n)(o)	Criminal Sexual Conduct 4	E
609.3451 subd. 3	Criminal Sexual Conduct 5	G
609.3453	Criminal Sexual Predatory Conduct	see note[3]
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 (Internet or computer)	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 (2^{nd} or subsequent violation)	4
609.377 subd. 4	Malicious Punishment of Child (bodily harm)	4

[3] See Guidelines Sections II.A., Offense Severity, and II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment II.A.03.* for additional information on determining the presumptive sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
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	1
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 $5,000)	3
609.466	Medical Assistance Fraud ($5,000, or less)	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	3 *
609.485 subd. 4(a)(2)	Escape, Mental Illness	1
609.485 subd. 4(a)(3)	Escape with Violence from GM or Misd.	unranked

* See Section II. C., Presumptive Sentence, to determine the presumptive disposition for an escape from an executed sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
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	8
609.486	Bullet-Resistant Vest During Crime	1
609.487 subd. 3	Fleeing Peace Officer	1
609.487 subd. 4(a)	Fleeing Peace Officer (resulting in 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[4]
609.494 subd. 2(b)	Solicitation of Juveniles	see note[5]
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[6]
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

[4] See Guidelines Section II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

[5] See Guidelines Section II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

[6] See Guidelines Section II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence.

STATUTE	OFFENSE	SEVERITY LEVEL
609.52 all sections	Theft of Public Funds (over $5,000)	3
609.52 all sections *	Theft of Public Funds ($5,000, or less)	2
609.52 all sections *	Theft from Person	4
609.52 all sections *	Theft of Public Records	3
609.52 all sections *	Theft (Looting)	2
609.52 subd. 2(1)	Theft (over $5,000)	3
609.52 subd. 2(1)	Theft ($5,000, or less)	2
609.52 subd. 2(1) *	Theft of a Motor Vehicle	4**
609.52 subd. 2(2)	Taking Pledged Property (over $5,000)	3
609.52 subd. 2(2)	Taking Pledged Property ($5,000, or less)	2
609.52 subd. 2(3) with subd. 3(1)	Theft by Check/False Representation (over $35,000)	6
609.52 subd. 2(3)(i)	Theft by Check ($5,001 - $35,000)	3
609.52 subd. 2(3)(i)	Theft by Check ($5,000, or less)	2
609.52 subd. 2(3)(ii-v)	Theft by False Representation ($5,001-$35,000)	3
609.52 subd. 2(3)(ii-v)	Theft by False Representation ($5,000, or less)	2
609.52 subd. 2(4) with subd. 3(1)	Theft by Trick (over $35,000)	6
609.52 subd. 2(4)	Theft by Trick ($5,001-$35,000)	3
609.52 subd. 2(4)	Theft by Trick ($5,000, or less)	2
609.52 subd. 2(5)	Temporary Theft (over $5,000)	3
609.52 subd. 2(5)	Temporary Theft ($5,000, or less)	2
609.52 subd. 2(6)	Refusing to Return Lost Property (over $5,000)	3
609.52 subd. 2(6)	Refusing to Return Lost Property ($5,000, or less)	2
609.52 subd. 2(7)	Theft from Coin Operated Machine (over $5,000)	3
609.52 subd. 2(7)	Theft from Coin Operated Machine ($5,000, or less)	2

* Includes offenses sentenced according to M.S. § 609.52, subd. 3 (3) (d).

** See *Comment II.A.05.* for commentary on motor vehicle offense severity levels.

STATUTE	OFFENSE	SEVERITY LEVEL
609.52 subd. 2(8)	Theft of Trade Secret	3
609.52 subd. 2(9)	Theft of Leased Property (over $5,000)	3
609.52 subd. 2(9)	Theft of Leased Property ($5,000, or less)	2
609.52 subd. 2(10)&(11)	Altering Serial Number (over $5,000)	3
609.52 subd. 2(10)&(11)	Altering Serial Number ($5,000, or less)	2
609.52 subd. 2(12)	Theft of Cable TV Services (over $5,000)	3
609.52 subd. 2(12)	Theft of Cable TV Services ($5,000, or less)	2
609.52 subd. 2(13)	Theft of Services (over $5,000)	3
609.52 subd. 2(13)	Theft of Services ($5,000, or less)	2
609.52 subd. 2(14)	Theft of Telecommunication Services (over $5,000)	3
609.52 subd. 2(14)	Theft of Telecommunication Services ($5,000, or less)	2
609.52 subd. 2(15)(16) with subd. 3(1)	Diversion of Corporate Property (over $35,000)	6
609.52 subd. 2(15)(16)	Diversion of Corporate Property ($5,001 - $35,000)	3
609.52 subd. 2(15)(16)	Diversion of Corporate Property ($5,000, or less)	2
609.52 subd. 2(17) *	Motor Vehicle Use without Consent	3**
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[7]
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

* Includes offenses sentenced according to M.S. § 609.52, subd. 3 (3) (d).

** See *Comment II.A.05.* for commentary on motor vehicle offense severity levels.

[7] See Guidelines Section II.A., Offense Severity, to determine the severity level.

STATUTE	OFFENSE	SEVERITY LEVEL
	($1,000, or less)	
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, with previous conviction)	2
609.526	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (second 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
609.528 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 1	8

STATUTE	OFFENSE	SEVERITY LEVEL
609.562	Arson 2	5
609.563 all sections	Arson 3	3
609.5641 subd. 1	Wildfire Arson	2
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 1 (Occupied Dwelling)	6 *
609.582 subd. 1(b)(c)	Burglary 1 (w/Weapon or Assault)	8
609.582 subd. 2(a)(1)(2)	Burglary 2 (Dwelling/Bank)	5
609.582 subd. 2(a)(3)(4)	Burglary 2 (Pharmacy/Tool)	4
609.582 subd. 2(b)	Burglary 2 (Government building, religious est., historic property, or school building)	5
609.582 subd. 3	Burglary 3 (Non Residential)	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)	Damage to Property (Risk Bodily Harm)	3
609.595 subd. 1(2)(3)(4)	Damage to Property (Over $500/Service to Public)	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

* See Section II.C., Presumptive Sentence, to determine the presumptive disposition.

STATUTE	OFFENSE	SEVERITY LEVEL
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	Simple 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	Counterfeiting Currency	unranked
609.635	Obtaining Signature by False Pretense	2
609.64	Recording, Filing of Forged Instrument	2
609.645	Fraudulent Statements	1
609.65	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 Silencer	2
609.66 subd. 1a(a)(1)	Firearm Silencer (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

STATUTE	OFFENSE	SEVERITY LEVEL
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	1
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 1	5
609.71 subd. 2	Riot 2	2
609.712	Real/Simulated Weapons of Mass Destruction	unranked
609.713 subd. 1	Terroristic Threats-Violence Threat/Evacuation	4
609.713 subd. 2	Terroristic Threats-Bomb Threat	2
609.713 subd. 3(a)	Terroristic Threats-Replica Firearm	1

STATUTE	OFFENSE	SEVERITY LEVEL
609.714	Offense in Furtherance of Terrorism	see note[8]
609.746 subd. 1(e)	Interference with Privacy (subsequent violations or minor victim)	1
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/Stalking (aggravated violations)	4
609.749 subd. 4(a)	Harassment/Stalking (2nd or subsequent violations)	4
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609.749 subd. 5	Harassment/Stalking (pattern of conduct)	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
609.80 subd. 2	Cable Communication Systems Interference	1
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(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

[8] See Guidelines Sections II.A., Offense Severity, and II.G., Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to determine the presumptive sentence. See *Comment II.A.03.* for additional information on determining the presumptive sentence.

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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	Unauthorized Computer Access	unranked
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 2	1
609.894 subd. 4	Cellular Counterfeiting 1	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

STATUTE	OFFENSE	SEVERITY LEVEL
617.241 subd. 4	Obscene Materials-Distribution	unranked
617.246	Use of Minors in Sexual Performance Prohibited	E
617.247 subd.3	Dissemination of Pictorial Representation of Minors (subsequent or by predatory offenders)	D
617.247 subd.3	Dissemination of Pictorial Representation of Minors	E
617.247 subd.4	Possession of Pictorial Representation of Minors (subsequent or by predatory offenders)	F
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624.713 subd. 1(a)	Certain Persons Not to Have Firearms	3
624.713 subd. 1(b)	Certain Persons Not to Have Firearms	6
624.7132 subd. 15(b)	Transfer Pistol to Minor	2
624.714 subd. 1a	Pistol w/out 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
624.731 subd. 8(a)	Tear Gas and Tear Gas Compounds; Electronic incapacitation devices	3
624.732 subd. 2	Intentional Release of Harmful Substance	3
624.74	Metal Penetrating Bullets	unranked
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
641.165 subd. 2(b)	Bring Dangerous Weapon into County Jail	4

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