

# Minnesota Sentencing Guidelines Commission

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## Adopted Modifications to the MN Sentencing Guidelines and Commentary August 2007

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### A. New and Amended Crimes Passed by the 2007 Legislature – Effective August 1, 2007

#### 1. Guidelines Section V. Offense Severity Reference Table

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VIII	<u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(a)</u>
V	<u>Burglary 2 – 609.582, subd. 2(b)</u> <u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(b)</u>
IV	<u>Violation of a Domestic Abuse No Contact Order – 518B.01, subd.22(d)</u>
III	<u>Damage or Theft to Energy Transmission, Telecommunications – 609.593</u> <u>Criminal Vehicular Homicide or Operation – 609.21, subd. 1(8); 1a(c)</u>
II	<u>Theft; \$1,000 or less (risk of bodily harm) – 609.52, subd. 3a</u> <u>Residential Mortgage Fraud – 609.822</u>
C	<u>Criminal Sexual Conduct 3 - 609.344 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), &amp; (n) &amp; (o)</u>

E Criminal Sexual Conduct 4 - 609.345 subd. 1 (c), (d), (g), (h), (i), (j), (k), (l), (m), & (n) & (o)

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**2. Misdemeanor and Gross Misdemeanor Offense List**

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

**3. Guidelines Section VI. Offenses Eligible for Permissive Consecutive Sentences**

Statute Number	Offense
....	
<u>518B.01, subd.22(d)</u>	<u>Violation of a Domestic Abuse No Contact Order</u>
<u>609.352, subd. 2a</u>	<u>Solicitation of Children to Engage in Sexual Conduct (Internet or computer)</u>

**4. Adopted Modifications Due to New Theft Thresholds**

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 V Financial Exploitation of a Vulnerable Adult (over ~~\$2,500~~ \$5,000) - 609.2335

IV Financial Exploitation of a Vulnerable Adult (~~\$2,500~~ \$5,000 or less) – 609.2335

III Computer Damage over \$2,500 – 609.88  
Computer Theft over \$2,500 – 609.89  
Embezzlement of Public Funds over \$2,500 – 609.54  
Financial Transaction Card Fraud over \$2,500 – 609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Receiving Stolen Goods (over ~~\$2,500~~ \$5,000) – 609.53  
Rustling and Livestock Theft over \$2,500 – 609.551  
III Telecommunications and Information Services Fraud over \$2,500 – 609.893, subd. 1  
Theft Crimes - Over ~~\$2,500~~ \$5,000 (See *Theft Offense List*)

Computer Damage; \$2,500 or less – 609.88  
Computer Theft; ~~\$2,500~~ or less – 609.89  
II Embezzlement of Public Funds; \$2,500 or less – 609.54  
Financial Transaction Card Fraud; \$2,500 or less – 609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Receiving Stolen Goods (~~\$2,500~~ \$5,000 or less) – 609.53  
Rustling and Livestock Theft; \$2,500 or less – 609.551  
Telecommunications and Information Services Fraud; \$2,500 or less – 609.893, subd. 1  
Theft Crimes - ~~\$2,500~~ \$5,000 or less (See *Theft Offense List*)

I Theft from Abandoned or Vacant Building (~~\$500~~ \$1,000 or less) - 609.52, subd. 3 (3) (d) (iii)

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### ***Theft Offense List***

It is recommended that the following property crimes be treated similarly. This is the list cited for the two THEFT CRIMES (~~\$2,500~~ \$5,000 or less and over ~~\$2,500~~ \$5,000) in the Offense Severity Reference Table.

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~~Computer Damage~~  
609.88

~~Computer Theft~~  
609.89

~~Embezzlement of Public Funds~~  
609.54

~~Financial Transaction Card Fraud~~  
609.821, subd. 2(1), (2), (5), (6), (7), & (8)

Receiving Stolen Property  
609.53

~~Rustling and Livestock Theft~~  
609.551

Telecommunications and Information Services Fraud  
609.893, subd. 1

....

**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 ~~\$2,500~~ 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.*

**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 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 ~~\$200~~ 500 but less than ~~\$500~~ 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.*

**5. Guidelines Section V. Offense Severity Reference Table is modified to treat precious metal dealers and scrap metal dealers the same.**

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VI	[	<del>Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.526, (1)</del>
		<del>Precious Metal Dealers, Receiving Stolen Goods (over \$300) - 609.526, 2nd or subs. Violations</del>
IV	[	<u>Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (second or subsequent violations) - 609.526</u>
		<u>Precious Metal Dealers, Receiving Stolen Goods (\$301 - \$2,500) - 609.526 (1) &amp; (2)</u>
III	[	<u>Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000 or more) - 609.526, subd. 2(1)</u>

II Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (less than \$1,000)  
– 609.526, subd. 2(2)  
.....

**6. Guidelines Section II.A is modified to address theft offenses with a reasonably foreseeable risk of bodily harm to another.**

**Guidelines Section II.A. Offense Severity: . . . .**

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.

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## B. Non-Legislative Modifications – Effective August 1, 2007

### 1. Second Custody Status Point for Sex Offenders

Guidelines Section II.B is modified, making sex offenders eligible for a second point under any listed custody status condition.

#### Guidelines Section II.B.2.

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; 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 ~~on probation, supervised release, or conditional release~~ 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).

**II.B.205.** *When an offender who is on any custody status condition listed above ~~probation, conditional release or supervised release~~ 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).*

## 2. Presumptive Sentence for Felony DWI with Previous Criminal Vehicular Operations

Guidelines Sections II.C and E are modified to establish a policy for determining the presumptive sentence for a felony DWI with a prior felony alcohol-related criminal vehicular operations. The new policy is the same as that for a felony DWI with a prior felony DWI.

**Guidelines Section II.C. Presumptive Sentence:** .... 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.

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**Guidelines Section II.E. Mandatory Sentences:** .... 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.

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## C. Technical Modifications – Effective August 1, 2007

### 1. Modifications Resulting from the Re-Codification of Burglary in the Second Degree and Criminal Vehicular Operations

#### V. Offense Severity Reference Table

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VIII	Criminal Vehicular Homicide <del>and Injury</del> <u>or Operation</u> – 609.21, subd. <del>1 &amp; 3</del> <u>1a(a)</u>
V	Criminal Vehicular Homicide <del>and Injury</del> <u>or Operation</u> – 609.21, subd. <del>2 &amp; 4</del> <u>1a(b)</u> Burglary 2 – 609.582, subd. 2(a) <del>&amp; (b)</del> <u>(1) &amp; (2)</u>
IV	Burglary 2 – 609.582, subd. 2(a) <del>(c) &amp; (d)</del> <u>(3) &amp; (4)</u>
III	Criminal Vehicular Homicide <del>and Injury</del> <u>or Operation</u> - 609.21, subd. <del>2a</del> <u>1a(c)</u>

.....

#### VI. Offenses Eligible for Permissive Consecutive Sentences

Statute Number	Offense
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609.21, subd. <del>1 &amp; 3</del> <u>1a(a)</u>	Criminal Vehicular Homicide
609.21, subd. <del>2 &amp; 4</del> <u>1a(b)</u>	Criminal Vehicular Operation - Great Bodily Harm
609.21, subd. <del>2a</del> <u>1a(c)</u>	Criminal Vehicular Operation – Substantial Bodily Harm
609.582, subd. 2(a) <u>(1)</u>	Burglary Second Degree - Dwelling
609.582, subd. 2(b) <u>(a)(2)</u>	Burglary Second Degree – Bank
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#### Guidelines Section II.B. Criminal History:

- .....
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 ~~injury~~ 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 ~~injury~~ operation violations.

**II.B.301. . . .**

*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 ~~injury~~ 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 ~~injury~~ operation or first degree (felony) driving while impaired.*

**II.B.302. . . .**

*The Commission believes that offenders whose current conviction is for criminal vehicular homicide or ~~injury~~ 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 ~~injury~~ operation (~~CVI~~ CVO) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/~~CVI~~ CVO misdemeanor units. If there are less than four units, add in any DWI/~~CVI~~ CVO units. Four or more units would equal one point. Only DWI/~~CVI~~ CVO units can be used in calculating additional points. Each set of four DWI/~~CVI~~ CVO units would equal an additional point. For example, if an offender had two theft units and six DWI/~~CVI~~ CVO units, the theft would be added to the two DWI/~~CVI~~ CVO units to equal one point. The remaining four DWI/~~CVI~~ CVO units would equal a second point. In a second example, if an offender had six theft units and six DWI/~~CVI~~ CVO units, the first four theft units would equal one point. Four of the DWI/~~CVI~~ CVO units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/~~CVI~~ CVO units for a third point. The total misdemeanor score would be two.*

## 2. Released Pending Sentencing Custody Status

Guidelines Section II.B is modified to clarify that “released pending sentencing” means released pending sentencing following a guilty plea or conviction.

### Guidelines Section II.B

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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

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## 3. Exclusion of Criminal History Used to Enhance Current Offense

Guidelines Section II.B.6 is modified to clarify that prior felony offenses should not be excluded, even when they are the basis for the enhancement.

### Guidelines Section II.B.6.

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 \$200 but less than \$500 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 ~~current subsequent~~ felony DWI ~~that is a felony because the offender has a prior felony DWI~~, but any the prior Felony DWI would be counted as part of the felony criminal history score.*

#### **4. Decayed Priors Apply in Presumptive Commitment Policy**

Guidelines Section II.C is modified to clarify that prior decayed offenses not used in calculating felony points can be used to determine the presumptive disposition.

##### **Guidelines Section II.C. Presumptive Sentence: . . . .**

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.

Similarly, When the current conviction offense is a severity level VI drug 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 received 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 policy 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 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.

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## **5. Presumptive Sentences that Exceed the Statutory Maximums**

Guidelines Section II.H is modified to clarify presumptive sentences cannot exceed statutory maximums and that this occurs in cells other than those with criminal history scores of six or more.

### **Guidelines Section II.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. ~~This will occur in a handful of cases each year for offenders with criminal history scores of six or more.~~ If that situation occurs, the statutory maximum sentence becomes the presumptive sentence length.*

**6. Presumptive Consecutive Durations for Felony DWI**

Guidelines Section II.F is modified to address presumptive consecutive durations for felony DWI offenders who are not given executed prison sentences.

**Guidelines Section II.F: . . . .**

**Presumptive Consecutive Sentences**

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 ~~presumptive~~ disposition is probation, the presumptive sentence for the felony DWI is a consecutive stayed sentence with a duration based on ~~the appropriate grid time~~ 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)).

. . . .

**7. Out-of-State Adult Certified Priors**

Guidelines Section II.B is modified to clarify that out-of-state offenses committed by persons under the age of 18 should not be included as prior adult felony criminal history unless it can be shown that the offense would have been certified had it been committed in Minnesota.

**Guidelines Section II.B.5.**

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).

## **8. Upper and Lower Ranges for Presumptive Commitment Offenses within Shaded Areas of the Grids**

Guidelines Section II.I is created to clarify that ranges exist for presumptive commitment offenses that fall within the shaded areas of the grids.

**Guidelines Section II.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.

## 9. Date of Offense in Guidelines Text and Determined by Factfinder

Guidelines Section II.A is modified, moving language about determining the date of offense from the commentary into the text and amending it to reflect current case law.

### Guidelines Section II.A

#### A. Offense Severity: . . . .

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).

. . . .

#### Comment

*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. ~~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. If there is a reasonable likelihood that all of the offender's multiple acts occurred before a date on which the presumptive sentence changed, the earlier presumptive sentence should be used. If there is no reasonable likelihood that all of the offender's multiple acts occurred before that date, the later presumptive sentence should be used. See State v. Murray, 495 N.W.2d 412, 415 (Minn. 1993)(articulating rule).~~

~~If the date of the offense is not specified in the complaint and cannot be ascertained with certainty, the judge shall establish the relative order of events, based on the information available, to determine whether or not the juvenile record is to be considered, whether or not a custody status point is to be assigned, and the order of sentencing.~~

~~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.~~

## 10. Mandatory Sentences for Certain Sex Offenses

Guidelines Sections are modified as a result of statutory changes.

### **Guidelines Section II.A. Offense Severity: . . . .**

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 is 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.



## 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, and continues to have a mandatory life sentence.~~

### **Guidelines Section II.C. Presumptive Sentence: . . . .**

~~The sentencing guidelines do not apply to offenders sentenced under M.S. § 609.109, subdivision 3, which mandates a life sentence for certain repeat sex offenders. The minimum term of imprisonment for offenders sentenced under this statute is 30 years.~~

[Repealed, 2006 c 260 art 1 s 48]

### **Guidelines Section II.E. Mandatory Sentences: . . . .**

~~First degree murder and sex offenders subject to Minn. Stat. § 609.109, subd. 3 and § 609.3455, subdivision 2, which have mandatory life imprisonment sentences, are excluded from offenses covered by the sentencing guidelines.~~

#### *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 criminal sexual conduct offense, 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.04. In State v. Feinstein, 338 N.W.2d 244 (Minn. 1983), the Supreme Court held that judges had the authority to stay execution of mandatory three year prison sentences for second or subsequent sex offenses. Although the Supreme Court decision authorized stays of execution for second or subsequent sex offenses, the presumptive disposition for second or subsequent sex offenses is still imprisonment. A stay of execution for such a case constitutes a dispositional departure and written reasons which specify the substantial and compelling nature of the circumstances and which demonstrate why the disposition selected is more appropriate, reasonable, or equitable than the presumptive disposition are required.*~~

### **Guidelines Section II.D. Departures from the Guidelines: . . . .**

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:

. . . .

b. Aggravating Factors:

.....

- (7) Offender is a “~~patterned sex offender~~” (See Minn. Stat. ~~§ 609.108~~) sentenced according to Minn. Stat. § 609.3455, subd. 3a (Mandatory sentence for certain engrained offenders).

Subdivision 1.[Repealed, 2006 c 260 art 1 s 48]

Subd. 2.[Repealed, 2005 c 136 art 2 s 23]

Subd. 3.[Repealed, 2006 c 260 art 1 s 48]

Subd. 4.[Repealed, 2006 c 260 art 1 s 48]

Subd. 5.[Repealed, 2006 c 260 art 1 s 48]

Subd. 6.[Repealed, 2006 c 260 art 1 s 48]

Subd. 7.[Repealed, 2006 c 260 art 1 s 48]

**11. Remove Repealed Statute and Mislabeled Value**

*Theft Offense List*

~~Theft of Registered Bicycles~~

~~168C.09~~

[Repealed, 1Sp2005 c 6 art 2 s 48]

<b>II</b>	Coercion ( <del>\$300</del> <u>\$301</u> - \$2,500) - 609.27, subd. 1 (2), (3), (4), & (5)
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**12. Grid Changes Resulting from Modifications**

**Guidelines Section II.G. Convictions for Attempts, Conspiracies, and Other Sentence**

**Modifiers: .....**

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

<sup>1</sup> M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower downward and 20% higher upward from the presumptive sentence 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. However, because the statutory maximum sentence for these offenses is no more than 20 years, the range is capped at that number.

## 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.

#### CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	<b>XI</b>	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480<sup>2</sup></i>	426 <i>363-480<sup>2</sup></i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	<b>X</b>	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	<b>IX</b>	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	<b>VIII</b>	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	<b>VII</b>	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-86</i> <i>84<sup>2</sup></i>
<i>Assault, 2nd Degree</i> <i>Felon in Possession of a Firearm</i> <i>Controlled Substance Crime, 3rd Degree</i>	<b>VI</b>	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	<b>V</b>	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	<b>IV</b>	12 <sup>1</sup>	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$2,500)</i>	<b>III</b>	12 <sup>1</sup>	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200<sup>1</sup>-2,500)</i>	<b>II</b>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	<b>I</b>	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 <i>17-22</i>



Presumptive commitment to state imprisonment. First-Degree Murder has a mandatory life sentence and is excluded from the guidelines by law and continues to have a mandatory life sentence. 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.

<sup>1</sup> One year and one day

<sup>2</sup> M.S. § 244.09 requires the Sentencing Guidelines to provide a range for sentences which are presumptive commitment to state imprisonment of 15% lower downward and 20% higher upward from the presumptive sentence 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. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.

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

Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2 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 offenses offenders in this section of the grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. ~~always carry a presumptive commitment to state prison. These offenses include second and subsequent Criminal Sexual Conduct offenses.~~ (See, Guidelines Sections II.C. Presumptive Sentence and II.E. Mandatory Sentences.

<sup>1</sup> One year and one day

<sup>2</sup> 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 I.II Sentence Ranges for Presumptive Commitment Offenses in Shaded Areas of Grids.

Effective August 1, 2007