Minnesota Sentencing Guidelines Commission

Adopted Modifications to the Sentencing Guidelines and Commentary Effective Date: August 1, 2016*

The Minnesota Sentencing Guidelines Commission adopted the following modifications to the Sentencing Guidelines and Commentary resulting from new and amended legislation and other policy considerations.

A. Legislative Amendments to Controlled Substance Offenses. The Commission reviewed laws related to controlled substance offenses newly enacted or amended by the 2016 Legislature, and adopted a proposal to modify the Minnesota Sentencing Guidelines to add § 4.C (Drug Offender Grid) and comments 2.C.11 and 2.E.05; and to make modifications in §§ 1.B.13, 1.B.17, 2.B.1.a, 2.B.1.b, 2.C.1, 2.C.3.c, 2.E.2.c, 5.A, 5.B, and 6; comments 2.C.10 and 2.E.06 (currently numbered 2.E.05); and Appendix 1.

1. Modification to Guidelines § 1.B.

The Commission adopted a proposal to modify § 1.B, as a result of legislative amendments to controlled substance offenses, to take effect August 1, 2016, as follows.

Section 1.B. Definitions

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

* * *

13. Presumptive Sentence. * * *
    a. Presumptive Disposition. * * *
    b. Presumptive Duration. The "presumptive duration" is the recommended fixed sentence length in months found in the appropriate cell on the applicable Grid.
    c. Presumptive Range. The "presumptive range" is provided for a sentence that is a presumptive commitment. Pursuant to Minn. Stat. § 244.09, subd. 5(2), the range is 15 percent lower and 20 percent higher than the fixed duration displayed in each cell on the Grids.

* The effective date is August 1, 2016, unless noted otherwise.

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

17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Drug offenses are arranged on the Drug Offender Grid into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious. * * *

2. Modifications to Guidelines § 2.B.1.

The Commission adopted a proposal to modify § 2.B.1, as a result of legislative amendments to controlled substance offenses and legislative amendments that would mandate modifications to the Guidelines, to take effect August 1, 2016, as follows.

Section 2.B. Criminal History

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

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

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1 ½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	2
	B – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

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

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1 ½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	3
	B – C	2
	D – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

* * *

3. Modifications to Guidelines § 2.C.

The Commission adopted a proposal to modify § 2.C, as a result of legislative amendments to controlled substance offenses, to take effect August 1, 2016, as follows.

Section 2.C. Presumptive Sentence

* * *

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). * * *

   Each cell on the ~~Standard Grid and Sex Offender~~ Grids provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence except as provided in section 2.C.3.c(1). The shaded areas of the grids do not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum. * * *

3. Finding the Presumptive Sentence for Certain Offenses. * * *
   c. Controlled Substance Offenses.

      (1) Certain First-Degree Offenses. If the current conviction is for controlled substance crime in the first degree and the penalty statute is Minn. Stat. § 152.021, subd. 3(c) (related to sale or possession of at least 100 grams or 500 dosage units of certain controlled substances), or if the current conviction is for aggravated controlled substance crime in the first degree, then the lower range, although displayed on the Drug Offender Grid, is excluded from what would otherwise be the presumptive range for that offense.

      (2) Subsequent Controlled Substance Convictions. If the current conviction offense is for a controlled substance crime in the first~~,~~ or second~~, or third~~ degree and is a "subsequent controlled substance conviction" as defined in

Minn. Stat. § 152.01, subd. 16a, the presumptive disposition is commitment. ~~A stay of adjudication under Minn. Stat. § 152.18 that occurred before August 1, 1999 is not a prior disposition under Minn. Stat. § 152.01, subd. 16a. The prior dispositions listed in Minn. Stat. § 152.01, subd. 16a, trigger~~ Such a conviction triggers the presumptive commitment unless more than ten years have elapsed since discharge from sentence ~~or stay of adjudication~~. The presumptive duration for a controlled substance conviction falling under this section is the ~~fixed~~ duration indicated in the appropriate cell on the Drug Offender Grid, or the mandatory minimum, whichever is longer. * * *

Comment * * *

2.C.10. ~~*Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.*~~ *Minn. Stat. § 152.021, subdivisions 3(c) and 3(d), exclude the lower range, as defined in section 1.B.13.d, from what would otherwise be the presumptive range. While the mandatory-minimum provision of subd. 3(c) may be waived for an offender sentenced for a first-degree possession crime who had not previously been convicted of controlled substance crime in the first, second, or third degree, a sentence duration that is shorter than the fixed presumptive sentence, even if within the lower range, is nevertheless a mitigated durational departure if subd. 3(c) applies. Under either subdivision, the presumptive disposition is commitment.*

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

4. Modifications to Guidelines § 2.E.

The Commission adopted a proposal to modify § 2.E, as a result of legislative amendments to controlled substance offenses, to take effect August 1, 2016, as follows.

Section 2.E. Mandatory Sentences

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2. Specific Statutory Provisions. * * *

c. ~~Subsequent Drug~~ Controlled Substance Offenses Involving a Dangerous Weapon. Pursuant to Minn. Stat. § 609.11, subd. 5a, some drug offenses committed with a dangerous weapon may be subject to one of the following two provisions.

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

(2) Subsequent Controlled Substance Offenses. If an offender is sentenced for a ~~second or~~ subsequent ~~drug~~ controlled substance offense and is subject to Minn. Stat. § 609.11, subd. 5a, the presumptive duration is the longer of either:

~~(1)~~ (i) the mandatory minimum sentence for the subsequent ~~drug~~ controlled substance offense added to the mandatory minimum sentence for the dangerous weapon involvement; or

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

* * *

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

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

+ 36 months Mand. Min. for weapon (Minn. Stat. § 609.11, subd. 5(a))

=158 months

Minn. Stat. § 609.11, subd. 5a, does not apply to Minn. Stat. § 152.021, subd. 2b(1), which, by definition, involves the use or possession of a firearm.

~~2.E.05~~ 2.E.06. *Minn. Stat. § 609.11, subd. 5a, states that for a subsequent ~~drug~~ controlled substance offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the ~~Standard~~ Drug Offender Grid for the subsequent ~~drug~~ controlled substance offense; the presumptive duration is the longer of the two. For example: A ~~third~~ second-degree drug offender with a Criminal History Score of ~~3~~ 2 is convicted of a subsequent controlled substance offense and was in possession of a firearm.*

Mandatory Minimums: ~~24~~36 months Mand. Min. (Minn. Stat. § 152.02~~3~~2, subd. 3(b))
+ 36 months Mand. Min (Minn. Stat. § 609.11, subd. 5(a))

=~~60~~72 months

vs.

Grid Cell: =~~39~~68 months (Severity Level ~~6~~D7; Criminal History Score of ~~3~~ 2)

* * *

5. Addition of Guidelines § 4.C.

   The Commission adopted a proposal to add § 4.C, as a result of legislative amendments that would mandate modifications to the Guidelines, to take effect August 1, 2016, as follows.

4.C. Drug Offender Grid

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

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

* Lower range may not apply. See section 2.C.3.c(1) and Minn. Stat. § 152.021, subdivisions 3(c) & 3(d).

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

Presumptive commitment to state imprisonment.

Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Effective August 1, 2016

Examples of Executed Sentences (Length in Months) Broken Down by:

Term of Imprisonment and Supervised Release Term

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

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

6. Modifications to Guidelines §§ 5.A and 5.B.

The Commission adopted a proposal to modify §§ 5.A and 5.B, as a result of legislative amendments that would mandate modifications to the Guidelines, to take effect August 1, 2016, as follows.

Section 5.A. 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. * * *

Severity Level	Offense Title	Statute Number
~~9~~	~~Controlled Substance Crime 1st Degree~~	~~152.021~~
~~9~~	~~Manufacture Any Amount of Methamphetamine~~	~~152.021, subd. 2a(a)~~
~~9~~	~~Importing Controlled Substances Across State Borders~~	~~152.0261~~
~~8~~	~~Controlled Substance Crime 2nd Degree~~	~~152.022~~
~~6~~	~~Controlled Substance Crime 3rd Degree~~	~~152.023~~
~~6~~	~~Failure to Affix Stamp on Cocaine~~	~~297D.09, subd. 1~~
~~6~~	~~Failure to Affix Stamp on Hallucinogens or PCP~~	~~297D.09, subd. 1~~
~~6~~	~~Failure to Affix Stamp on Heroin~~	~~297D.09, subd. 1~~
~~6~~	~~Failure to Affix Stamp on Remaining Schedule I & II Narcotics~~	~~297D.09, subd. 1~~
~~5~~	~~Possession of Substances with Intent to Manufacture Methamphetamine~~	~~152.0262~~
~~4~~	~~Controlled Substance Crime 4th Degree~~	~~152.024~~
~~3~~	~~Anhydrous Ammonia (Tamper/Theft/Transport)~~	~~152.136~~
~~3~~	~~Methamphetamine Crimes Involving Children and Vulnerable Adults~~	~~152.137~~
~~2~~	~~Controlled Substance in the 5th Degree~~	~~152.025~~

~~2~~	~~Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics~~	~~297D.09, subd. 1~~
~~2~~	~~Medical Cannabis Violations (Submission of False Records)~~	~~152.33, subd. 4~~
~~2~~	~~Sale of Synthetic Cannabinoids~~	~~152.027, subd. 6(c)~~
~~1~~	~~Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols~~	~~297D.09, subd. 1~~
~~1~~	~~Failure to Affix Stamp on Schedule IV Substances~~	~~297D.09, subd. 1~~
~~1~~	~~Medical Cannabis Violations (Intentional Diversion)~~	~~152.33, subd. 1~~
~~1~~	~~Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)~~	~~152.33, subd. 2~~
~~1~~	~~Sale of Simulated Controlled Substance~~	~~152.097~~

Severity Level	**Offense Title**	**Statute Number**
D9	Aggravated Controlled Substance Crime 1st Degree	152.021, subd. 2b
	Importing Controlled Substances Across State Borders	152.0261
	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)
D8	Controlled Substance Crime 1st Degree	152.021, subd. 1 or 2
D7	Controlled Substance Crime 2nd Degree	152.022
D6	Controlled Substance Crime 3rd Degree	152.023
	Failure to Affix Stamp on Cocaine	297D.09, subd. 1
	Failure to Affix Stamp on Hallucinogens or PCP	297D.09, subd. 1
	Failure to Affix Stamp on Heroin	297D.09, subd. 1
	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	297D.09, subd. 1
D5	Possession of Substances with Intent to Manufacture Methamphetamine	152.0262
D4	Controlled Substance Crime 4th Degree	152.024
D3	Anhydrous Ammonia (Tamper/Theft/Transport)	152.136
	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137

Severity Level	**Offense Title**	**Statute Number**
D2	Controlled Substance Crime 5th Degree	152.025, subd. 4(b)
	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
	Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4
	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
D1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	297D.09, subd. 1
	Failure to Affix Stamp on Schedule IV Substances	297D.09, subd. 1
	Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	152.33, subd. 2
	Sale of Simulated Controlled Substance	152.097

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5.B. Severity Level by Statutory Citation

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

Statute Number	**Offense Title**	**Severity Level**
152.021, subd. 1 or 2	Controlled Substance Crime 1st Degree	~~9~~D8
152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	D9
152.021, subd. 2b	Aggravated Controlled Substance Crime 1st Degree	D9
152.022	Controlled Substance Crime 2nd Degree	~~8~~D7*
152.023	Controlled Substance Crime 3rd Degree	D6*
152.024	Controlled Substance Crime 4th Degree	D4

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

Statute Number	Offense Title	Severity Level
152.025, subd. 4(b)	Controlled Substance Crime 5th Degree	D2
152.0261	Importing Controlled Substances Across State Borders	D9
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	D5
152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	D2
152.097	Sale of Simulated Controlled Substance	D1
152.136	Anhydrous Ammonia (Tamper/Theft/Transport)	D3
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	D3
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	D1
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	D1
152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	D2
297D.09, subd. 1	Failure to Affix Stamp on Cocaine	D6
297D.09, subd. 1	Failure to Affix Stamp on Hallucinogens or PCP	D6
297D.09, subd. 1	Failure to Affix Stamp on Heroin	D6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	D6
297D.09, subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	D2
297D.09, subd. 1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	D1
297D.09, subd. 1	Failure to Affix Stamp on Schedule IV Substances	D1

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7. Modifications to Guidelines § 6.

The Commission adopted a proposal to modify § 6, as a result of legislative amendments to controlled substance offenses, to take effect August 1, 2016, as follows.

Section 6. Offenses Eligible for Permissive Consecutive Sentences

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

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

Statute Number	**Offense Title**
152.021, subd. 2a(a)	Manufacture any Amount of Methamphetamine
152.021, subd. 2b(2) with ref. to 152.01, subd. 24(8)	Aggravated Controlled Substance Crime 1st Degree, Sale to a Minor or Vulnerable Adult
152.022, subd. 1~~(5)~~(6)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023, subd. 1(3)	Sells Sch. I,II,III to Minor (not Narcotic)
152.023, subd. 1(4)	Sells Sch. I,II,III Employs Minor (not Narcotic)
152.024, subd. 1(2)	Schedule IV or V to Minor
152.024, subd. 1(3)	Employs Minor to Sell Schedule IV or V
152.0261, subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults

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8. Modifications to Guidelines Appendix 1.

The Commission adopted a proposal to modify Appendix 1 as a result of legislative amendments to controlled substance offenses, to take effect August 1, 2016, as follows.

Appendix 1. Mandatory and Presumptive Sentences Reference Table

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
152.021	Controlled Substance Crime 1st Degree	Prior felony conviction ~~per chapter~~ under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense. ~~finding under Minn. Stat. § 152.18~~	48 Months
152.022	Controlled Substance Crime 2nd Degree	Prior felony conviction ~~per chapter~~ under Minn. Stat. § 152.021 or 022, or similar non-Minnesota offense. ~~finding under Minn. Stat. § 152.18~~	36 Months
~~152.023, subd. 3(a)~~	~~Controlled Substance Crime 3rd Degree~~	~~Prior felony conviction under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18~~	~~Grid Time*~~
~~152.023, subd. 3(b)~~	~~Controlled Substance Crime 3rd Degree~~	~~Prior felony conviction under Minn. Stat. § 152 or finding under Minn. Stat. § 152.18~~	~~24 months~~

~~* Presumptive commitment per Guidelines section 2.C.~~

* * *

B. Legislative Amendments to Non-Controlled Substance Offenses. The Commission reviewed laws related to non-controlled substance offenses newly enacted or amended by the 2016 Legislature, and adopted a proposal to modify Minnesota Sentencing Guidelines to add new §§ 2.G.11 and 2.G.12; and to make modifications in §§ 2.B.3.g, 5.A, 5.B, and 6; comments 2.B.304 and 2.D.308; and Appendix 1.

1. Modification to Guidelines § 2.B.

The Commission adopted a proposal that, for Criminal Vehicular Homicide (Death or Death to an Unborn Child, Qualified Prior Conviction), assign no misdemeanor units to the qualified prior driving offense that was used to increase the statutory maximum penalty, by modifying § 2.B.3, to take effect August 1, 2016, as follows.

Section 2.B. Criminal History

* * *

3. Prior Gross Misdemeanors and Misdemeanors. * * *

   g. Assignment of Units for Criminal Vehicular Homicide or Operation or Felony Driving While Impaired (DWI). If the current conviction is for criminal vehicular homicide or operation or felony DWI, assign previous violations of Minn. Stat. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 two units each. There is no limit to the total number of misdemeanor points that can be included in the offender's criminal history score due to criminal vehicular homicide or operation or DWI offenses. For DWI offenses, see section 2.B.6 for exceptions to this policy relating to predicate offenses used for enhancement purposes. For Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction), assign no misdemeanor units to the qualified prior driving offense that was used to increase the statutory maximum penalty. * * *

Comment

* * *

2.B.304. *The Commission believes that offenders whose current conviction is for criminal vehicular homicide or operation or first-degree (felony) driving while impaired, and who have prior violations under Minn. Stats. §§ 169A.20, 169A.31, 169.121, 169.1211, 169.129, 360.0752, 609.2112, 609.2113, or 609.2114 are also more culpable, and for these offenders there is no limit to the total number of misdemeanor points included in the*

*criminal history score due to DWI or criminal vehicular homicide or operation (CVO) violations. * * **

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

2. Modification to Guidelines § 2.D.

The Commission adopted a proposal to clarify that the use of the aggravating factor involving bias motivation under Guidelines § 2.D.3.b(11) is prohibited when the statutory maximum was increased under Minn. Stat. § 609.2233 by modifying Comment 2.D.308, to take effect August 1, 2016, as follows.

Section 2.D. Departures from the Guidelines

* * *
2.D.308. *The aggravating factor involving bias motivation under section 2.D.3.b(11) cannot be used when ~~an offender has been convicted under a statute that~~ sentencing an offender for a crime with an increased statutory maximum penalty under Minn. Stat. § 609.2233 (felony assault motivated by bias), or for a crime that was 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(a)(1) (stalking)). The Commission intends that a penalty for a bias-motivated offense be subject to enhancement only once. * * **

3. Modification to Guidelines § 2.G.

The Commission adopted a proposal to increase by 25 percent the presumptive sentence duration when the statutory maximum was increased under Minn. Stat. § 609.2233; and to increase by 50 percent the presumptive sentence duration when an offender is sentenced for a criminal vehicular homicide under Minn. Stat. § 609.2112, subd. 1(b) (death, qualified prior conviction), or 609.2114, subd. 1(b) (death to an unborn child, qualified prior conviction), by inserting new §§ 2.G.11 & 2.G.12, to take effect August 1, 2016, as follows.

Section 2.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

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

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

4. Modification to Guidelines §§ 5.A and 5.B.

The Commission adopted a proposal to assign severity-level rankings as a result of new laws and conforming modifications as a result of amended laws, by modifying §§ 5A & 5B, to take effect August 1, 2016, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
8	Criminal Vehicular Homicide (Death)	609.2112, subd. 1(a)
	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	609.2112, subd. 1(b)
	Criminal Vehicular Operation (Death to an Unborn Child)	609.2114, subd. 1(a)
	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	609.2114, subd. 1(b)

* * *

Severity Level	Offense Title	Statute Number
4	Interference with a Dead Body or Scene of Death	609.502 subd. 1(1)

* * *

Severity Level	Offense Title	Statute Number
3	Coercion (Prop. Value $2,500 or More)	609.27, subd. 1(2),(3), (4), ~~&~~ (5), & (6)

* * *

Severity Level	Offense Title	Statute Number
3	Nonconsensual Dissemination of Private Sexual Images	617.261, subd. 2(b)

* * *

Severity Level	Offense Title	Statute Number
2	Coercion (Prop. Value $301 - $2,~~499~~500)	609.27, subd. 1(2),(3), (4), ~~&~~ (5), & (6)

* * *

Severity Level	Offense Title	Statute Number
1	Assault~~s~~ 4th Degree Motivated by Bias	609.2231, subd. 4(b)

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
609.2112, subd. 1(a)	Criminal Vehicular Homicide (Death)	8
609.2112, subd. 1(b)	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	8*
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)	5
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)	3
609.2114, subd. 1(a)	Criminal Vehicular Operation (Death to an Unborn Child)	8
609.2114, subd. 1(b)	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	8*
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)	5

* See section 2.G.12 to determine the presumptive sentence.

* * *

Statute Number	Offense Title	Severity Level
609.2231, subd. 4(b)	Assault~~s~~ 4th Degree Motivated by Bias	1 **
609.2233	Felony Assault Motivated by Bias	See Note*

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

* See section 2.G.11 to determine the presumptive sentence.

* * *

Statute Number	Offense Title	Severity Level
609.27, subd. 1(2),(3), (4), ~~&~~ (5), & (6)	Coercion (Prop. Value ~~over~~ $2,500 or More)	3
609.27, subd. 1(2),(3), (4), ~~&~~ (5), & (6)	Coercion (Prop. Value $301 - $2,500)	2

* * *

Statute Number	Offense Title	Severity Level
609.502 subd. 1(1)	Interference with a Dead Body or Scene of Death	4

* * *

Statute Number	Offense Title	Severity Level
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images	3

* * *

5. Modification to Guidelines § 6.

The Commission adopted a proposal to add nonconsensual dissemination of private sexual images to the list of offenses eligible for permissive consecutive sentences, by modifying § 6, with the modification to take effect August 1, 2016, as follows.

Section 6. Offenses Eligible for Permissive Consecutive Sentences

* * *

Statute Number	Offense Title
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images

6. Modification to Guidelines Appendix 1.

The Commission adopted a proposal to make technical changes to Appendix 1, to take effect August 1, 2016, as follows.

Appendix 1. Mandatory and Presumptive Sentences Reference Table

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
169A.24, subd. 1(2)	Driving while Intoxicated	Prior Felony DWI	Grid Time
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(2) thru (6); § 609.2114.2(2) thru (6)	Grid Time

* * *

C. Non-Legislative Modifications. Through the course of the previous year, the Commission reviews potential non-legislative modifications. As a result of these reviews, the Commission adopted a proposal to modify Minnesota Sentencing Guidelines to make modifications in §§ 2.B.2.b, 2.B.5.b, 5.A, 5.B, and 8; and Appendix 2; to renumber Minnesota Sentencing Guidelines § 2.G.11 as § 2.G.13, effective August 1, 2016; and to make modifications in Minnesota Sentencing Guidelines § 2.G.13 (currently numbered § 2.G.11), effective August 1, 2017.

1. Modification to Guidelines § 2.B.2.

The Commission adopted a proposal to clarify that both a current sex offense, as described in § 2.B.2.b(1), *and* a custody status for a prior sex offense, as described in § 2.B.2.b(2), are required for the assignment of two custody status points, with the clarification to take effect August 1, 2016, as follows.

Section 2.B. Criminal History

* * *

2. Custody Status at the Time of the Offense.

* * *

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

(1) the current conviction offense is an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166); and

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

* * *

2. Modification to Guidelines § 2.B.5.

The Commission adopted a proposal to clarify that the policy for classifying non-Minnesota prior offenses is, like the policy for classifying Minnesota prior offenses, based on offense definitions and sentencing polices in effect when the current Minnesota offense was committed, with the modification taking effect August 1, 2016, as follows.

Section 2.B. Criminal History

* * *

5. Convictions from Jurisdictions other than Minnesota.

   * * *

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

      - whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota; **and**
      - the sentence imposed.

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

* * *

3. Modification to Guidelines § 2.G.

The Commission adopted a proposal to renumber Guidelines § 2.G.11 as § 2.G.13 and modify the Grid in that section, as shown below, to display whole numbers in the lower ranges of the Grid at Criminal History Scores 1, 3, and 5, with the renumbering taking effect August 1, 2016, and the remaining modifications taking effect August 1, 2017, as follows.

Section 2.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

~~11~~.13. Attempt or Conspiracy to Commit First-Degree Murder. When an offender is sentenced for attempt or conspiracy to commit murder in the first degree under Minn. Stat. § 609.185 or murder of an unborn child in the first degree under Minn. Stat. § 609.2661, the presumptive disposition is commitment. The presumptive durations are 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*~~ *162-228*	**200** *170-240*	**210** ~~*178.5*~~ *179-240* [1]	**220** *187-240* [1]	**230** ~~*195.5*~~ *196-240* [1]	**240** *204-240* [1]

[1] Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

* * *

4. Modification to Guidelines §§ 5.A. and 5.B.

The Commission adopted a proposal to designate a violation of the corporate political contributions law under Minn. Stat. § 211B.15, as "unranked" in Guidelines § 5, with the modification to take effect August 1, 2016, as follows.

Section 5.A. Offense Severity Reference Table

* * *

Severity Level	Offense Title	Statute Number
UNRANKED	Corporate Political Contribution Violations	211B.15

* * *

Section 5.B. Severity Level by Statutory Citation

* * *

Statute Number	Offense Title	Severity Level
211B.15	Corporate Political Contribution Violations	Unranked

* * *

5. Modification to Guidelines § 8.

The Commission adopted a proposal to modify the targeted misdemeanor list by putting violation of a domestic abuse no contact order under Minn. Stat. § 629.75, in numerical order, with the correction to take effect August 1, 2016, as follows.

Section 8. Targeted Misdemeanor List

(As provided for in Minn. Stat. § 299C.10, subd. 1(e))

Under Minn. Stat. § 299C.10, subd. 1(e), a targeted misdemeanor is a misdemeanor violation of:

Statute Number	**Offense Title**
169A.20	Driving While Impaired
518B.01~~; 629.75~~	Order for Protection Violation
609.224	Assault 5th Degree
609.2242	Domestic Assault
609.746	Interference with Privacy
609.748	Harassment or Restraining Order Violation
617.23	Indecent Exposure
629.75	Domestic Abuse No Contact Order Violation

6. Modification to Guidelines Appendix 2.

The Commission adopted a proposal to modify Appendix 2 to correctly list the condition that must be met for the mandatory minimum to apply under Minn. Stat. § 609.11, to take effect August 1, 2016, as follows.

Appendix 2. Dangerous Weapons Offense Reference Table

* * *

Dangerous Weapons – Minn. Stat. § 609.11			
Statute	**Offense**	**Prerequisite or Conditions**	**Minimum Duration**
609.11, subd. 4	Dangerous Weapon (Other than Firearm)	Weapon is an element of crime or otherwise established	1 Year and 1 Day
609.11, subd. 4	Dangerous Weapon (Other than Firearm) – Subsequent ~~o~~Offense	Current dangerous weapon (other than firearm) offense ~~(other than firearm)~~ with prior dangerous weapon (other than firearm) offense Weapon is an element of crime or otherwise established	36 Months
609.11, subd. 5(a)	Firearm	~~Weapon~~ Firearm is an element of crime or otherwise established	36 Months
609.11, subd. 5(a)	Firearm – Subsequent Offense	Current firearm offense with prior firearm ~~or dangerous weapon~~ offense ~~Weapon~~ Firearm is an element of crime or otherwise established	60 Months
609.11, subd. 5(b)	Certain Persons not to have Firearms or Ammunition	Current conviction under Minn. Stat. § 609.165 or Minn. Stat. § 624.713 subd. 1(2)	60 Months

* * *