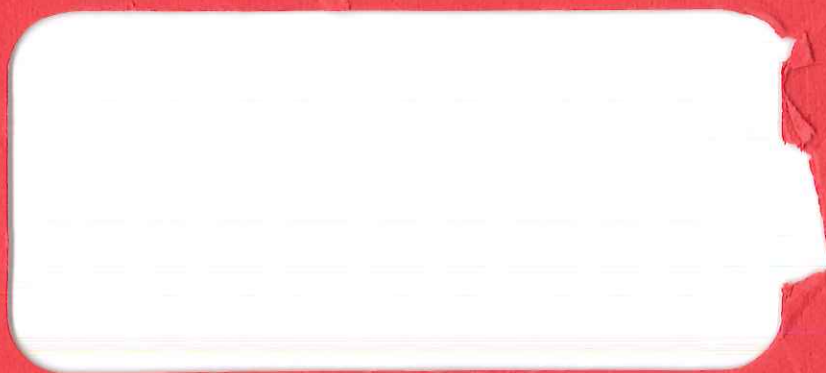
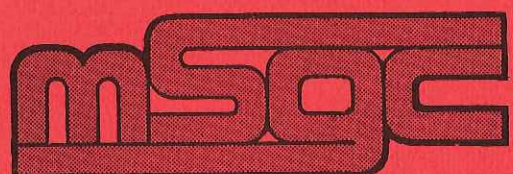


# Minnesota Sentencing Guidelines Commission



**Minnesota Sentencing Guidelines Commission**

**REPORT TO THE LEGISLATURE**

**November, 1986**

**TABLE OF CONTENTS**

I. 1986 Guidelines Modifications . . . . . 2

    A. Modifications that received previous legislative review . . . . . 2

    B. Ranking of new crimes . . . . . 4

    C. Other modifications not requiring prior legislative review . . . . . 9

II. 1987 Proposed Guidelines Modifications Requiring Prior  
Legislative Review . . . . . 11

    A. Grid Changes - Severity level ten durations . . . . . 11

    B. Grid Changes - Attempted Murder 1st Degree . . . . . 12

    C. Severity Reference Table changes - housekeeping changes . . . . . 12

III. Ongoing Issues . . . . . 13

    A. Issue 1 - Jail Use . . . . . 13

    B. Issue 2 - Criminal History Scores . . . . . 14

    C. Issue 3 - Serious Person Offenders. . . . . 16

IV. Suggestions for Legislative Changes . . . . . 18

APPENDIX A: 1986 Modifications . . . . . 20

APPENDIX B: 1987 Proposed Modifications . . . . . 27

**Minnesota Sentencing Guidelines Commission**  
**REPORT TO THE LEGISLATURE**  
**November, 1986**

Several modifications went into effect August 1, 1986 that had received prior legislative review in the 1986 legislative session. The severity levels were increased for sale and possession of cocaine. The Commission ranked several inadvertently unranked offenses, including Price Fixing/Collusive Bidding. The Commission also modified the procedures for calculating the "decay" factor by simplifying the decay process for prior felony sentences. This new decay procedure will probably result in slightly longer sentences over time.

The legislature created and modified numerous statutes in the 1986 session, and the Commission's adopted severity levels are described in this report. The severity level was increased to seven, which is a presumptive commit to the commissioner, for sale of heroin, hallucinogens, PCP, and cocaine when the amount of the controlled substance is seven or more grams or ten or more dosage units as described by law. However, the Commission does have several concerns regarding this drug legislation. These concerns and some suggestions for legislative changes are included in this report. The Commission also ranked numerous new felonies for crimes committed against the unborn child at the same severity levels as the corresponding statutes for crimes defined as committed against other persons. In addition, the legislature created new felonies for prostitution and solicitation offenses involving children. The Commission ranked these new crimes generally at the same severity levels as the various degrees of Criminal Sexual Conduct against children.

There were three modifications that were adopted by the Commission which did not require prior legislative review and, therefore, were effective August 1, 1986. Two more aggravating factors were adopted by the Commission: 1) the conviction offense involved a crime against a person for hire; and 2) the offender commits a crime against a person in furtherance of criminal activity by an organized gang. Also, the Commission modified the consecutive language regarding escapes to clarify that an escape sentence is permissively consecutive to any other current or prior felony sentence. Finally, the Commission established that modifications to the sentencing guidelines would be applied to offenders whose date of adjudication of guilt is on or after the specified effective date.

The Commission proposes a major increase for severity level ten and Attempted Murder 1st Degree durations. These durations basically double the current durations, and will go into effect August 1, 1987 absent legislative action to the contrary along with a few housekeeping changes to the Severity Reference Table involving inadvertently unranked offenses.

Three major ongoing issues are being closely monitored by the Commission: 1) the nonuniform use of jails and the lack of proportionality in the amount of time an offender may spend in jail; 2) the increasing impact of prior criminal record on property offenders, resulting in a higher proportion of property offenders being recommended a prison sanction than what was initially projected under the just deserts philosophy of the sentencing guidelines; and 3) the decreasing rate of imprisonment for serious person offenders for whom the sentencing guidelines recommend imprisonment, particularly when the offender has no criminal record.

**I. 1986 Guidelines Modifications**

**A. Modifications that received legislative review**

The Commission proposed a number of modifications in 1985 that required prior legislative review. These proposed modifications were presented in the 1985 Report to the Legislature and became effective August 1, 1986. The adopted modifications included increasing the rankings for possession and sale of cocaine and the ranking of three offenses that were inadvertently excluded from the Offense Severity Reference Table. In addition, the Commission modified the procedure in the guidelines for calculating the "decay" factor.

1. The Commission initiated the modification to raise the severity level of sale of cocaine from level four to level six and possession of cocaine from level one to level three. These modifications classify cocaine with sale of heroin, hallucinogens, and PCP rather than with marijuana, and reflect the understanding that cocaine is more similar in effect to heroin, hallucinogens, and PCP than it is to marijuana.
2. The Commission ranked the inadvertently unranked offenses of Minn. Stat. § 609.53, Subd. 1(4), Receiving Stolen Property (firearm), and Minn. Stat. § 609.75, Subd. 7, Sports Bookmaking, at severity level four. Both of these crimes seemed similar in culpability to the kinds of theft crimes and other property crimes classified in severity level four.
3. The Commission ranked the inadvertently unranked offenses of Minn. Stat. § 325D.53, subd. 1(2) (a), Price Fixing/Collusive Bidding at severity level six, and Minn. Stat. § 325D.53, subd. 1(1) and subd. 1(2) (b) & (c), Price Fixing/Collusive Bidding at severity level five. The Commission ranked these crimes at a higher severity level than theft or theft related offenses because price fixing/collusive bidding offenses 1) contain elements of major economic crime; and 2) undermine a public process in the same way that perjury undermines a public process. Subd. 1(2) (a) was ranked at severity level six rather than five because the activity was more direct and explicit and suggested a higher degree of culpability. The Commission left Minn. Stat.

§ 325D.53, subd. 1(3), the "group boycott" clause, and Minn. Stat. § 325D.53, subd. 2 & 3, the "Arab anti-boycott" provisions unranked.

The Commission had proposed to rank all Price Fixing/Collusive Bidding offenses at severity level seven which would make it a presumptive imprisonment offense. The rankings of six and five were adopted to 1) maintain the proportionality between property and person offenses; and 2) limit the effect of prosecutorial discretion.

4. The Commission also modified the procedures for calculating the "decay" factor. The decay factor refers to the computation of criminal history scores and involves the "decay" of old felonies and misdemeanors such that they are not included in the calculations. The previous procedure, which had essentially been in effect since the guidelines were adopted, was very complicated, and had often times come to be applied erroneously. The Commission member who is a probation officer had long urged the Commission to simplify the procedure so that it would be applied consistently and accurately. The Commission modification significantly simplifies the decay factor for felony computation, and will on balance probably result in slightly longer sentences over time.

The modifications to the decay factor do not significantly affect the decay of misdemeanors. In 1983 the Commission adopted an absolute limit in use of prior misdemeanor offenses of ten years from the date of conviction. That was adopted at the request of the State Court Administrator's office because that office wanted to implement a ten year uniform record retention for misdemeanors due to the cost of retaining the records indefinitely. That procedure for misdemeanors will remain intact, and a similar procedure for felonies was adopted. An absolute 15 year limit from date of discharge from a prior felony to the date of the current offense is now in effect. The previous procedure was a ten year crime free period before decay. Another adopted revision was to treat prior stays of imposition and stays of execution the same for criminal history purposes. Previously, stays of imposition reverted to misdemeanor status five years from the date of discharge from the stay. That differentiation made it confusing and cumbersome, and also perpetuated disparity that exists statewide in the use of stays of imposition. Overall, the

adopted modifications will have little effect on sentencing practices, but will significantly facilitate application of the guidelines procedures by probation officers.

B. Ranking of new crimes

The Commission ranked numerous new crimes created by the legislature in the 1986 session, and these are outlined below.

1. In the 1986 session, penalties were increased for selling larger quantities (seven or more grams or ten or more dosage units) of schedule I and II narcotics and hallucinogens (not including marijuana). These increased statutory maximums were the result of an amended version of HF 654 which originally established mandatory minimum sentences for all sale of cocaine, heroin, and hallucinogens. The legislative intent behind this bill was to have the Commission rank these sale of drug offenses involving the described larger quantities at severity level seven, where imprisonment is presumed even with a criminal history score of zero.

The Commission had previously addressed legislative concerns regarding sale of drug offenses by modifying the guidelines, and had reported their perspective on the issue in previous reports to the legislature. In the 1983 Report to the Legislature, the Commission recommended that the ambiguous language in the second or subsequent mandatory minimum law for sale of drugs (Minn. Stat. § 152.15, subd. 1(1) and (2)) be clarified to address the repetitive drug offender. The legislature did not clarify that statute, and therefore the Commission modified the guidelines to presume imprisonment for second or subsequent sale of heroin, hallucinogens, PCP, and cocaine. That modification became effective August 1, 1985. The Commission also increased the ranking of possession and sale of cocaine from severity levels one and four to severity levels three and six respectively as a result of a motion by Commission member Dan Cain, a citizen representative. This modification was adopted to reflect the understanding that cocaine is more similar in effect to heroin, hallucinogens, and PCP than it is to marijuana, and became effective August 1, 1986.

The Commission reported their perspective on the appropriate sentence for sale of heroin, hallucinogens, PCP, and cocaine in the 1985 Report to the Legislature. It was determined that presumptive imprisonment when there is a criminal history score of zero is nonproportional to the seriousness of the usual drug sale offense. The usual drug sale offender is the "user-seller" who sells small amounts of drugs to his or her own circle of acquaintances in order to support his or her own drug use. It is not proportional to equate the typical drug sale offense with serious person offenses such as aggravated robbery, burglary with a weapon or assault, criminal sexual conduct with force, kidnapping, and manslaughter.

The Commission also reported that the non-typical or major drug sale offense is more deserving of a harsher sentence and that this could be accomplished by departure. The Commission had adopted a major drug aggravating factor in 1981 to cover the relatively few major drug offenses prosecuted in state courts, and was told by law enforcement officials that the aggravating factor would sufficiently differentiate the user-seller from the major dealer. If the legislature was not satisfied with this approach, the Commission did suggest redefining the statutes to differentiate major drug dealers from user-sellers so that they could be ranked proportionally.

The legislature, in the 1986 session, redefined the drug statutes to differentiate the major drug offenses by virtue of the quantity of the drug, and made it clear that the legislative intent was to have the Commission rank these newly defined drug offenses at severity level seven. The Commission ranked sale of cocaine, heroin, hallucinogens, PCP, and the remaining schedule I and II narcotics (Minn. Stat. § 152.15, subd. 1(1)) at severity level seven based on that clear legislative intent, but with reservations and concerns about the explicit language used to define major drug offenses. Three major concerns are described in the report below with suggestions for language clarification noted in Section IV, Suggestions for Legislative Changes.

The first concern is that the statutory language does not state whether the quantity of seven grams refers to the pure controlled substance only, or to the entire mixture containing the controlled substance. Similar federal statutes do explicitly describe the substance to be included as "100 grams or more of a



controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug . . .". Because the Minnesota statutes do not state mixture, the Commission, based on their experience as criminal justice practitioners, believe the quantities must refer to the pure controlled substance only. This is despite legislative intent to the contrary.

The second major concern is that the Commission does not believe that the statute defines the major drug offense. The quantities described in the statute are too small to differentiate between the casual and large drug traffickers. This is particularly true of the "ten dosage unit" quantity. The Commission must consider proportionality of sanctions when deciding where to rank offenses. While all members agree that major drug offenders should be placed in scale with aggravated robbers, forceful criminal sexual conduct offenders, and kidnapers, the members equally agree that the "user-seller" who sells relatively small amounts of drugs to his or her circle of acquaintances in order to support his or her own drug use be placed lower on the scale when the offender has no criminal history score.

The final major concern shared by Commission members is the impact the increase in severity levels for certain drug offenders will have on prison populations. The Commission was mandated by the legislature to take into substantial consideration existing resources when developing the guidelines. The Commission continues to take a responsible approach in their policy decisions by recognizing the impact of their decisions on the existing resources and reporting that information to the legislature. When the legislature passed this bill for increasing penalties for sale of drug offenses, there was no request for a fiscal impact statement. The legislature has not, therefore, had the opportunity to consider the impact these increased penalties will have on prison populations. Sentencing guidelines staff estimate the impact of ranking the new provisions with the described quantities of controlled substances at severity level seven (if interpreted as seven grams of mixture) will be approximately 88 beds per year. This is a significant number. This figure could be reduced if prosecutors use the new provisions as a plea negotiation tool or if law enforcement officials use the new provisions as a technique to persuade offenders to inform on the next level of the hierarchy. However, the

discretion to send a particular drug offender to prison would then be removed from the judge (where there is a system of accountability) and placed in the hands of prosecutors and law enforcement officials.

- 1(a). Included in the same bill that increased penalties for major drug dealers was a provision to create a felony offense for failing to affix a tax stamp on controlled substances for dealers. The Commission classified this offense by the type of controlled substance involved, and ranked it one severity level lower than the ranking for sale of the controlled substance. The rankings are as follows: Failure to Affix Stamp on Cocaine, Hallucinogens, Heroin, PCP, and Remaining Schedule I and II Narcotics, Minn. Stat. 297D.09, subd. 1 - severity level six; Failure to Affix Stamp on Remaining Schedule I, II, & III Non-narcotics, Minn. Stat. 297D.09, subd. 1 - severity level two; Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols and Schedule IV Substances, Minn. Stat. 297D.09, subd. 1 - severity level one.
2. The legislature created several new felony crimes involving an unborn child. The Commission recognized and agreed with the legislative intent regarding these new crimes, and ranked them at the same corresponding severity levels as for other persons:

<u>Severity Level</u>	<u>Offense</u>
V	Criminal Vehicular Operation - 609.21, subd. 3
III	Criminal Vehicular Operation - 609.21, subd. 4
X	Murder 2 of an Unborn Child - 609.2662 (1)
IX	Murder 2 of an Unborn Child - 609.2662 (2)
IX	Murder 3 of an Unborn Child - 609.2663
VIII	Manslaughter 1 of an Unborn Child - 609.2664(1) & (2)
VII	Manslaughter 1 of an Unborn Child - 609.2664 (3)
VII	Manslaughter 2 of an Unborn Child - 609.2665 (1)
V	Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), & (4)
VIII	Assault 1 of an Unborn Child - 609.267
IV	Assault 2 of an Unborn Child - 609.2671

- VIII      Death of an Unborn Child in Commission of Crime - 609.268, subd. 1
- IV        Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2

The Commission also ranked Conspiracy/Attempted Murder 1st Degree of an Unborn Child, 609.2661 at the same level as for other persons, which ranking is found on a separate grid in Section II.G. of the Minnesota Sentencing Guidelines and Commentary.

3.      Several changes were made to the prostitution and solicitation statutes in the 1986 legislative session to increase the penalties for offenses involving children.

The penalties for soliciting or inducing an individual under the age of 13 to practice prostitution were increased by the legislature. The Commission ranked this offense, Solicitation of Prostitution, Minn. Stat. 609.322, subd. 1, at severity level eight. This offense is comparable to Criminal Sexual Conduct first degree, Minn. Stat. 609.342 (a), which involves sexual penetration with very young children, and is also ranked at severity level eight.

Similarly, the penalties for receiving profit derived from prostitution when the individual is under the age of 13 years were increased by the legislature. The Commission ranked this offense, Receiving Profit Derived from Prostitution, Minn. Stat. 609.323, subd. 1, at severity level eight for the same reasons noted above.

The legislature increased the penalties for engaging, hiring, or offering or agreeing to hire an individual under the age of 13 years to engage in sexual penetration or sexual conduct. Penalties were also increased for the age group of at least 13 years but under the age of 16. The Commission ranked Prostitution (Patron), Minn. Stat. 609.324, subd. 1(a) which involves an individual under the age of 13 years, at severity level eight. It was equated to Criminal Sexual Conduct 1st Degree, Minn. Stat. 609.342 (a), which is sexual penetration with a child under the age of 13 years, and also ranked at severity level eight. The Commission ranked Prostitution (Patron), Minn. Stat. 609.324, subd. 1(b) which involves an individual in the age group of at least 13 years but under the age of 16, at severity level five. It was equated to Criminal Sexual

Conduct 3rd Degree, Minn. Stat. 609.344 (b) which is sexual penetration with a child at least 13 years but under the age of 16 years and also ranked at severity level five. The remaining age group (at least 16 years but under 18) did not have increased penalties enacted by the legislature, and the Commission ranked Prostitution (Patron), Minn. Stat. 609.324, subd. 1(c) at severity level three, its previous ranking.

The legislature also made it a felony to solicit children to engage in sexual conduct when the child is under the age of 15 and the offender is 18 years of age or older. The Commission ranked Solicitation of Children to Engage in Sexual Conduct, Minn. Stat. 609.352, subd. 2 at severity level three. This offense is similar to Criminal Sexual Conduct 4th Degree, Minn. Stat. 609.345 (b) except that CSC 4th degree actually involves sexual contact. Solicitation does not involve sexual conduct, and therefore the Commission proportionally ranked this offense one severity level lower than CSC 4th degree.

4. The legislature expanded the crime of theft to cover diversions of corporate property and unlawful distributions. The Commission ranked Diversion of Corporate Property, Minn. Stat. 609.52, subd. 2(15) & (16) in the Theft Offense List. Offenses involving amounts from \$250 - \$2,500 are ranked at severity level three, and offenses involving amounts over \$2,500 are ranked at severity level four. This is the same ranking that this offense received when it was cited under a different statutory citing that has since been repealed.
5. The final new felony crime ranked by the Commission was escape from custody by certain mentally ill patients. The Commission ranked Escape from Custody, Minn. Stat. 609.485, subd. 4(2) at severity level one.

C. Other modifications not requiring prior legislative review

The Commission is required to present modifications for legislative review prior to their effective date when those modifications amend the sentencing guidelines grid, including severity levels and criminal history scores, or which would result in the reduction of any sentence or in the early release of any inmate. The following modifications did not require prior legislative review and went into effect August 1, 1986:

1. Tom Johnson, Hennepin County Attorney, presented to the Commission a proposal to add two specific factors to the list of aggravating reasons for departure, one dealing with gang members and one dealing with crimes against persons committed for hire. Commission members agreed that offenders who commit crimes against persons for hire are deserving of an aggravated sentence. The Commission also agreed that something needed to be done to respond to the problem of criminal gang activity. The Commission worked with Tom Johnson to develop language for an aggravating factor that would allow aggravated departures to be made when the crime committed was a crime against the person in furtherance of criminal activity by an organized gang. The Commission was careful to define an "organized gang". They were concerned that a gang not be construed to mean a group of young people returning from a basketball game. The Commission adopted both proposed aggravating factors, and defined "organized gang" as "an association of five or more persons, with an established hierarchy, formed to encourage gang members to perpetrate crimes or to provide support to gang members who do commit crimes." The Commission recognized, however, that any sentencing system cannot solve all the problems of criminal gang activity.
2. The Commission clarified the language in the guidelines to indicate that it is permissive to pronounce a sentence for Escape from Custody consecutive to any other current or prior felony sentence. The previous language was ambiguous and was interpreted differently by different judges. The Commission believes it is critical for the security of the institutions and credibility of the programs that individuals be held accountable for the act of escape.
3. The final modification to go into effect August 1, 1986 was a clarification as to which offenders any new modifications would be applied. Although the Commission has generally used an August 1 effective date, it has been unclear to practitioners whether new modifications should be applied to offenders who commit their offenses on or after the designated effective date, or to offenders who are sentenced on or after the designated effective date. The Commission adopted the language that modifications to the guidelines would be applied to offenders whose date of adjudication of guilt is on or after the specified modification effective date. The Commission believes that although

the date the offender is adjudicated guilty can be manipulated to some extent, it has the advantage of clearer application of the guidelines. The system does not have to operate under several sets of guidelines at one time.

## **II. 1987 Proposed Guidelines Modifications Requiring Prior Legislative Review**

### **A. Grid changes - Increases in severity level ten durations**

At the June, 1986, Commission meeting, the County Attorney's Association presented a proposal to the Commission for increasing durations for second degree murder. The proposal would increase durations at severity level ten from 120 months at criminal history score zero to 216 months, and increase durations by 20 months for every increment in the criminal history score. The proposal was directed at reducing the substantial difference between the prescribed sentence for first degree murder (mandatory life: a minimum term of imprisonment of 17½ years before eligible for release) and intentional second degree murder (120 months with a zero criminal history score: a minimum term of imprisonment of 6½ years when all good time is earned). The County Attorney's Association argued that only subtle differences existed between the crime of premeditated intentional first degree murder and intentional second degree murder, and therefore the penalties must be made more proportional.

The Commission proposes the durations for severity level ten be increased to the levels presented by the County Attorney's Association. The Commission agrees that the current durations are too low and not proportional to the seriousness of the offense. The current durations are based to some extent on past practice (prior to the sentencing guidelines), and with the truth in sentencing of the guidelines, the differences between first and second degree murder durations are more obvious. While the Commission recognizes that the impact of these increased durations on prison populations is substantial, 40 to 70 beds per year, the Commission believes this proposal supports the guideline policy to reserve prison space for the serious person offenders. The Commission would prefer to make an adjustment in the allocation of prison space elsewhere, such as with property offenders, and continue to ensure that the prison space will be available to imprison those who commit crimes against persons.

B. Grid Changes - Increases in Attempted Murder 1st Degree

The Commission conducted a second public hearing this year on December 4 to consider increasing durations for Attempted Murder 1st Degree. The Commission believes it is necessary to maintain proportionality between Attempted Murder 1st Degree durations and the increased durations for severity level ten that were proposed and adopted by the Commission in July, 1986. Both of these sets of modifications will require prior legislative approval before they can become effective on August 1, 1987.

C. Severity Reference Table changes - housekeeping changes

The Commission proposes to rank Voting Violations, Minn. Stats. 201.014, 201.016, 201.054 at severity level one. This offense has been inadvertently excluded from the guidelines. The Commission had received a letter from Anoka County Attorney Robert Johnson stating that these offenses are usually committed without a deliberate attempt to influence an election in a particular jurisdiction.

The Commission proposes to rank another inadvertently excluded offense from the guidelines. Financial Transaction Card Fraud, Minn. Stat. 609.821, subd. 2(3) & (4) has a proposed ranking of severity level one. These offenses do not involve monetary loss, but rather the selling, transferring, or the intent to use a card without the consent of the owner. The remaining clauses (1), (2), (5), (6), and (7) that do involve monetary loss the Commission proposes to rank as Theft Related Crimes whereby offenses involving \$2,500 or less would be ranked at severity level three and offenses involving over \$2,500 would be ranked at severity level four.

The final proposal is to clarify the monetary ranges for Theft Crimes and Theft Related Crimes. Currently, the lower range reads \$250 - \$2,500 based on the felony range specified in the general theft statute, Minn. Stat. 609.52. However, there are some theft crimes that are felonies regardless of their amount and appear to be technically unranked. The Commission proposes to amend the lower range in the Theft Offense List and the Theft Related Offense List to read "\$2,500 or less".

### III. Ongoing Issues

The Sentencing Guidelines Commission is monitoring three major areas of concern regarding sentencing guidelines practices, and may at some point in the future recognize a necessity to recommend changes or additions to the sentencing guidelines to address these concerns. The three major issues are: 1) the non-uniform use of jails and the lack of proportionality in the amount of time an offender may spend in jail; 2) the increasing impact of prior criminal record on property offenders resulting in a higher proportion of property offenders being recommended a prison sanction than what was initially intended under the just deserts philosophy of the sentencing guidelines; and 3) the decreasing rate of imprisonment for serious person offenders for whom the sentencing guidelines recommend imprisonment, particularly when the offender has no prior criminal record. These three issues are discussed below in more detail.

#### A. Jail Use

Although the sentencing guidelines have substantially increased uniformity in the use of prisons by 34%, there continues to be a lack of uniformity in the use of jail as a condition of a stayed felony sentence. The decision to pronounce a period of jail incarceration as a condition of a stayed sentence appears to have little relationship to the offender's conviction offense or prior criminal record. In addition, there appears to be little proportionality with respect to the length of the jail time and the offender's conviction offense or prior criminal record. This sometimes results in offenders, usually property offenders, requesting to be sentenced to prison because the prison term is considered less onerous than the nonimprisonment sanctions. Thus, prison space intended to be used for serious person offenders is being occupied by property offenders for whom the guidelines recommend a nonimprisonment sanction.

Other factors also warrant concern regarding the use of jails as a condition of a stayed felony sentence: 1) it appears that the legislature is very interested in offenders receiving a minimum amount of time in a local jail or workhouse for certain types of crimes, as indicated by the mandatory jail terms the legislature has imposed in recent legislative sessions; 2) the State Planning Agency has recommended that the Commission address the problems of the disparate and



nonproportional use of jails in their report Firm Convictions; and 3) there are indications that some local facilities may be experiencing overcrowding problems.

The Commission has previously explored the idea of nonimprisonment guidelines and has not developed nonimprisonment guidelines for two major reasons as indicated in the 1983 Report to the Legislature:

1. The inequality of jail and workhouse resources — both regarding quantity and quality — in various locations around the state, which render uniform guidelines unfeasible; and
2. The strong opposition of the criminal justice community to guidelines for the use of jails and workhouses which creates a political climate unfavorable to successful implementation.

Although the first reason above is no longer as relevant due to improvements in many local facilities (Statewide Jail Report Summary -- 1986, Minnesota Department of Corrections), the second reason given above is still a major concern of the Commission. This reason, as well as several others, has moved the Commission to consider the possibility of exploring further the concept of nonimprisonment guidelines, but not to actively develop guidelines at this time. Other reasons for not actually developing nonimprisonment guidelines include:

1. There is no Commission consensus on what is or should be the major sentencing philosophy behind the use of jail as a condition of a stayed sentence; i.e., punishment or rehabilitation; and
2. Some Commission members do not feel it is appropriate to set a statewide policy regarding the use of jails and other local resources because it is the local communities that must bear the financial burden.

#### B. Criminal History Scores

The sentencing guidelines monitoring data continue to show that criminal history is having a bigger impact on who goes to prison than what was initially projected under

the just deserts philosophy of the guidelines. Prosecutors have enormous discretion over how many offenses per offender to charge and pursue convictions. This decision will control the offender's criminal history score. This discretion impacts most heavily on property offenders where the percentage who received presumptive imprisonment recommendations in 1984 is double that of 1981; 13.8% and 7.0% respectively. The guidelines had originally intended for property offenders to receive community sanctions, such as local jail time, repeatedly before receiving a presumptive commit to the commissioner in order to reserve limited prison space for the serious person offenders. Below is a table displaying the proportions of person vs. property offenders committed to prison over time:

Commitments by Offense Type  
1978, 1981 - 1984

	<u>Property Offenders</u>	<u>Person Offenders</u>
1978 (pre guideline)	47%	39%
1981	37%	57%
1982	43%	50%
1983	50%	43%
1984	50%	43%

Note that in the first year of guidelines there was considerable success in the goal of the guidelines to imprison fewer property offenders and imprison more person offenders. By 1984, the proportions of person vs. property offenders committed to prison were nearly what they were prior to the sentencing guidelines.

In the past the Commission has considered a number of ways to address this concern. Weighting criminal history scores has been explored, i.e., prior convictions for person offenses would be weighted more heavily than prior nonperson offense convictions. Another suggestion had been to limit the number of property convictions that an offender could accumulate in a given year. Other suggestions had offered combinations of criminal history score weighting and limiting. The Commission has not decided whether to take any action at this time to control the increasing impact of the criminal history score. The situation will continue to be closely monitored.

C. Serious Person Offenders

While the percent of property offenders going to prison is increasing, the percent of person offenders going to prison is decreasing. In 1984, severity levels seven and eight, criminal history score zero, had nearly a 50% departure rate. In reviewing severity levels seven and eight, criminal history scores zero and one, the offenses receiving mitigated dispositional departures are virtually all Intrafamilial Sexual Abuse, Criminal Sexual Conduct 3rd degree, with force, and aggravated robbery, all very serious offenses. Nearly 90% of these offenders are white and the primary reason for departure (34%) is "needs treatment or amenable to supervision". The second predominant reason for departure is "best interest of the family" (17%).

The following table demonstrates imprisonment rates for two offenses which are always a presumptive commit, i.e. a stayed sentence is a departure:

Imprisonment Rates, 1981 - 1984 for  
Certain Offense Types By Race  
(All Cases are Presumptive Commit to Commissioner)

<u>Year</u>	<u>Aggravated Robbery</u>				<u>Criminal Sexual Conduct Else (not a or b)</u>			
	<u>White</u>		<u>Black</u>		<u>White</u>		<u>Black</u>	
	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>
1981	90.4	(104)	98.0	(48)	70.5	(43)	94.7	(18)
1982	91.6	(109)	91.5	(54)	83.7	(36)	90.3	(28)
1983	83.1	(69)	93.0	(53)	75.9	(44)	87.5	(14)
1984	77.9	(53)	93.5	(29)	67.5	(52)	80.0	(24)

Note the decreasing rate of imprisonment over time for white aggravated robbers as opposed to black aggravated robbers. The imprisonment rate for blacks sentenced for Criminal Sexual Conduct else has decreased over time from 94.7% in 1981 to 80.0% in 1984, but consistently over time it has been substantially higher than the rate for whites.

Similarly, decreasing rates of imprisonment are occurring for white offenders who are convicted of weapon offenses:

Imprisonment Rates, 1981 - 1984 for  
Weapon Offenses by Race  
(All Cases are Mandatory Minimum Commitments to Commissioner)

Year	<u>Dangerous Weapon</u>				<u>Assault 2nd Degree</u>			
	<u>White</u>		<u>Black</u>		<u>White</u>		<u>Black</u>	
	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>
1981	93.7	(104)	95.7	(45)	45.6	(36)	51.6	(16)
1982	86.0	(123)	92.8	(77)	69.1	(45)	64.7	(11)
1983	80.9	(89)	93.2	(55)	37.0	(37)	51.7	(15)
1984	79.5	(66)	95.9	(47)	32.7	(33)	58.6	(17)

The rate of imprisonment for white offenders convicted of weapon offenses (not including Assault 2nd Degree) has decreased from 93.7% in 1981 to 79.5% in 1984. The rate of imprisonment for black offenders convicted of weapon offenses (not including Assault 2nd Degree) is virtually the same in 1984 (95.9%) as it was in 1981 (95.7%). Assault 2nd Degree has much lower imprisonment rates for both racial groups over time, although the imprisonment rate for black offenders is considerably higher than for white offenders in all years except 1982.

In addition, when looking at Intrafamilial Sexual Abuse and Criminal Sexual Conduct a & b offenses which are predominantly committed by whites, we find more low imprisonment rates:

Imprisonment Rates 1981 - 1984, for  
Certain Offense Types Committed Predominantly by Whites  
(All Cases are Presumptive Commit to the Commissioner)

Year	<u>White Offenders</u>			
	<u>CSC a or b</u>		<u>IFSA</u>	
	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>
1981	58.8	(10)	100.0	(1)
1982	86.5	(32)	52.6	(10)
1983	54.0	(27)	34.6	(18)
1984	64.9	(37)	44.1	(41)

Note that although the imprisonment rates increased in 1984 for both offenses, the rates are still relatively low when considering that the sentencing guidelines recommend prison for all cases except when substantial and compelling circumstances exist.

It is recognized, however, that most of those offenders who do not serve prison terms do serve time in a local jail or workhouse for the above offense types. In 1984, for those cases with a presumption of commit to the commissioner, only 4.0% of whites who were convicted of child sexual abuse and 5.2% of whites who were convicted of other criminal sexual conduct offenses did not serve any time in prison or jail. All white offenders who were convicted of aggravated robbery and did not go to prison served at least some incarceration in a local jail or workhouse. All black offenders who were convicted of any of the above offenses and did not go to prison (not including Assault 2nd Degree), served at least some incarceration in a local jail or workhouse. For white offenders convicted of Assault 2nd Degree, 17.8% did not serve any time in prison or jail compared to 10.3% of the black offenders.

For those offenders with no criminal history score the average pronounced jail time for all of the above offenses except Assault 2nd Degree was between nine and ten months. Assault 2nd Degree offenses had an average pronounced jail time of between seven and eight months. These durations can be compared to the average pronounced prison sentences for offenders convicted of the above offenses with no criminal history score: Aggravated Robbery - 27 months; Child Sexual Abuse - 38 months; Other Criminal Sexual Conduct - 38 months; Dangerous Weapon offenses - 50 months; Assault 2nd Degree - 26 months. Although nearly all of these offenders are incarcerated, the offenders who do receive prison sentences are incarcerated for at least twice as long as those who receive a stayed sentence with local jail time. The Commission will continue to closely monitor this situation and will have more recent data available by the beginning of 1987.

#### **IV. Suggestions for Legislative Changes**

The Commission recommends the following change to the drug statute, Minn. Stat. 152.15 to satisfy the three major concerns the Commission has with the current language as explained above. The Commission also recommends that language be included to increase the penalties for offenders who sell drugs to minors.

It is recommended that Minn. Stat. 152.15, subd. 1 (1986) be changed to read as follows:

Subd. 1. Any person who violates section 152.09, subd. 1, clause (1) with respect to:

(1). Any controlled substance classified in schedule I or II which is a narcotic drug, or of phencyclidine or any hallucinogen listed in section 152.02, subd. 2, clause (3), or Minnesota Rules 6800.4210, item C, except marijuana or tetrahydrocannabinols, is guilty of a crime and upon conviction may be imprisoned for not more than 20 years or fined not more than \$60,000, or both for a first violation, and for a second or subsequent violation, upon conviction, shall be imprisoned for not less than two years nor more than 30 years or fined not more than \$100,000, or both if any of the following exist:

- (a) The substance containing the controlled substance, regardless of purity, weighs twenty-eight or more grams (1 ounce) when sold by weight; or
- (b) The substance, regardless of weight, which, when analyzed, is determined to contain seven or more grams (.25) in total of any pure controlled substance; or
- (c) The controlled substance, not normally sold by weight, constitutes 200 or more dosage units; or
- (d) The offender sells any quantity of the controlled substance to a person under the age of 15 years; or
- (e) The offender conspires with or employs any person under the age of eighteen years to sell any quantity of the controlled substance.

**Modifications to the Minnesota Sentencing Guidelines  
Effective August 1, 1986**

Section B (Criminal History) is modified as follows:

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

1. Subject to the conditions listed below, the offender is assigned one point 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.

- a. When multiple sentences for a single course of conduct were imposed pursuant to Minn. Stats. § § 609.585 or 609.251, the offender is assigned one point;
- b. An offender shall not be assigned more than two points for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;
- c. 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 item 3 below;
- ~~d. When a prior felony conviction results in a stay of imposition, and when that stay of imposition was successfully served, it shall be counted as a felony conviction for purposes of computing the criminal history score for five years from the date of discharge, and thereafter shall be counted as a misdemeanor under the provisions of item 3 below;~~
- ~~e~~d. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of ~~ten~~ fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense. ~~of any subsequent misdemeanor, gross misdemeanor or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence whether stayed or imposed.~~

Section B.3. (Criminal History) is modified as follows:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and two units for each gross misdemeanor conviction (excluding traffic offenses with the exception of DWI and aggravated DWI offenses when the current conviction offense is criminal vehicular operation) for which a sentence was stayed or imposed before the current sentencing. 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.
  - a. Only convictions of statutory misdemeanors or ordinance misdemeanors that conform substantially to a statutory misdemeanor shall be used to compute units.
  - b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, and the most serious conviction is for a gross misdemeanor, no offender shall be assigned more than two units.
  - ~~c. Prior misdemeanor and gross misdemeanor sentences will not be used in computing the criminal history score if a period of five years has elapsed since the date of discharge from or expiration of the sentence to the date of offense of any subsequent misdemeanor, gross misdemeanor, or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence, whether stayed or imposed.~~
  - c. A prior misdemeanor or gross misdemeanor sentence 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. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.



Addition to Section II.D.2.b.(Aggravating Factors for Departure):

- (6) The offender committed, for hire, a crime against the person.
- (7) The offender committed a crime against the person in furtherance of criminal activity by an organized gang. An "organized gang" is defined as an association of five or more persons, with an established hierarchy, formed to encourage gang members to perpetrate crimes or to provide support to gang members who do commit crimes.

Change to Section II.F.3. (Concurrent/Consecutive Sentences):

3. When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485 and there are unexpired or current executed sentences for any offense for which the person was in custody at time of the escape and/or current executed sentences for offenses committed while on escape status.

Addition to Section II. G. (Convictions for Attempts or Conspiracies) is as follows:

- G. **Convictions for Attempts or Conspiracies:** For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, 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. § 152.09, in which event the presumptive sentence shall be that for the completed offense. 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: . . .

Addition to Section III.F. (Related Policies) is as follows:

**F. Modifications:** Modifications to the Minnesota Sentencing Guidelines and Commentary will be applied to offenders whose date of adjudication of guilt is on or after the specified modification effective date.

**Changes to Section V. Offense Severity Reference Table**

X	<u>Murder 2 of an Unborn Child - 609.2662(1)</u>
IX	<u>Murder 2 of an Unborn Child - 609.2662 (2)</u> <u>Murder 3 of an Unborn Child - 609.2663</u>
VIII	<u>Assault 1 of an Unborn Child - 609.267</u> <u>Death of an Unborn Child in Commission of Crime - 609.268, subd. 1</u> <u>Manslaughter 1 of an Unborn Child - 609.2664 (1) &amp; (2)</u> <u>Prostitution (Patron) - 609.324, subd. 1(a)</u> <u>Receiving Profit Derived from Prostitution - 609.323, subd. 1</u> <u>Solicitation of Prostitution - 609.322, subd. 1</u>
VII	<u>Manslaughter 1 of an Unborn Child - 609.2664 (3)</u> <u>Manslaughter 2 of an Unborn Child - 609.2665 (1)</u> <u>Sale of Cocaine - 152.15, subd. 1(1)</u> <u>Sale of Hallucinogens or PCP - 152.15, subd. 1(1)</u> <u>Sale of Heroin - 152.15, subd. 1(1)</u> <u>Sale of Remaining Schedule I &amp; II Narcotics - 152.15, subd. 1(1)</u>
VI	<u>Escape from Custody - 609.485, subd. 4(4) (5)</u> <u>Price Fixing/Collusive Bidding - 325D.53, subd. 1(2) (a)</u> <u>Sale of Cocaine - 152.15, subd. 1(4) (2)</u> <u>Sale of Hallucinogens or PCP - 152.15, subd. 1(2) (3)</u> <u>Sale of Heroin - 152.15, subd. 1(4) (2)</u> <u>Sale of Remaining Schedule I &amp; II Narcotics - 152.15, subd. 1(4) (2)</u> <u>Failure to Affix Stamp on Cocaine - 297D.09, subd. 1</u> <u>Failure to Affix Stamp on Hallucinogens or PCP - 297D.09, subd. 1</u> <u>Failure to Affix Stamp on Heroin - 297D.09, subd. 1</u> <u>Failure to Affix Stamp on Remaining Schedule I &amp; II Narcotics - 297D.09, subd. 1</u>
V	<u>Criminal Vehicular Operation - 609.21, subd. 1 &amp; 3</u> <u>Manslaughter 2 of an Unborn Child - 609.2665 (2), (3), &amp; (4)</u> <u>Price Fixing/Collusive Bidding - 325D.53, subd. 1(1), &amp; subd. 1(2), (b) &amp; (c)</u> <u>Prostitution (Patron) - 609.324, subd. 1 (b)</u> <u>Receiving Profit Derived from Prostitution - 609.323, subd. 1a</u> <u>Solicitation of Prostitution - 609.322, subd. 1a</u>

IV Assault 2 of an Unborn Child - 609.2671  
Injury of an Unborn Child in Commission of Crime - 609.268, subd. 2  
Receiving Stolen Property (firearm) - 609.53, subd. 1(4)  
~~Sale of Cocaine - 152.15, subd. 1(1)~~  
Sports Bookmaking - 609.75, subd. 7

III Criminal Vehicular Operation - 609.21, subd. 2 & 4  
Possession of Cocaine - 152.15, subd. 2(1)  
Prostitution (Patron) - 609.324, subd. 1(c)  
Sale of Remaining Schedule I, II, and III Non-Narcotics - 152.15, subd.1(2)(3)  
Solicitation of Children to Engage in Sexual Conduct - 609.352, subd. 2

II Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(2) (3)  
Sale of a Schedule IV Substance - 152.15, subd. 1(3) (4)  
Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics -  
297D.09, subd. 1

I Escape from Custody - 609.485, subd. 4 (2)  
~~Possession of Cocaine - 152.15, subd. 2(1)~~  
Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols -  
297D.09, subd.1  
Failure to Affix Stamp on Schedule IV Substances - 297D.09, subd. 1

Changes to *Theft Offense List* are as follows:

Diversion of Corporate Property  
~~300.60~~ 609.52, Subd. 2 (15) and (16)

False Declaration of Claim  
471.392

Commentary Modifications to the Decay Factor  
Effective August 1, 1986

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 one point 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. 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, the offender would receive one point. 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.02.

~~II.B.105. However, when a prior felony conviction resulted in a stay of imposition which was successfully served, the offense will be counted as a felony for purposes of computing criminal history scores for five years from the date of discharge or expiration of the stay, and thereafter would be considered a misdemeanor. Under Minn. Stat. § 609.13, a person who successfully completes a stay of imposition is deemed to have been convicted of a misdemeanor, not a felony. The Commission thought that the primary purpose of this provision was to protect those who do not recidivate from civil disabilities that may attach to being convicted of a felony, rather than to provide a blanket immunity from having prior felonious behavior considered at future sentencing for those who do recidivate with a new felony offense.~~

~~The stay of imposition will be counted as a misdemeanor five years after the date of discharge from or expiration of the stay of imposition, even if the offender has been sentenced for crimes committed during the five year period. If the offender did not commit an offense which resulted in a misdemeanor, gross misdemeanor, or felony sentence during the five year period after discharge from or expiration of the stay of imposition, the stay of imposition decays as a misdemeanor and shall not be used at all in computing the criminal history score.~~

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 time interval between those sentences and subsequent offenses 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 ~~after a significant period of offense-free living, 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 ~~ten~~ fifteen years had elapsed ~~between from~~ the date of discharge ~~from~~ or expiration of that sentence or stay of imposition ~~and~~ the date of the current offense. ~~a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was imposed or stayed. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the offense-free period. 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.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. If five years have elapsed between the expiration of or discharge from a misdemeanor or gross misdemeanor sentence and the date of a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was stayed or imposed, that misdemeanor or gross misdemeanor sentence will not be used in computing the criminal history score. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the offense-free period.~~

~~A ten year limit for considering misdemeanor sentences was adopted for two reasons. First, the retention of misdemeanor records for extended periods is prohibitively expensive for many counties and therefore retention schedules have varied among the counties. A ten year limit provides a uniform standard for considering misdemeanor sentences and allows for the establishment of a uniform retention schedule. Secondly, the Commission feels that the relevance of a prior misdemeanor offense for current felony sentencing is significantly reduced over time.~~

**II.D.202.** ~~An aggravated sentence would be appropriate when the current conviction is for an offense in which the victim was injured and there is a prior felony conviction for an offense in which the victim was injured even if the prior felony offense had decayed in accordance with section II.B.1.d.~~

APPENDIX B

PROPOSED MODIFICATIONS, EFFECTIVE AUGUST 1, 1987 ABSENT ANY LEGISLATIVE ACTION TO THE CONTRARY

Proposed changes to Section V. Offense Severity Reference Table are as follows:

- III Theft Crimes - ~~\$250~~-\$2,500 or less (See *Theft Offense List*)
- II Theft Related Crimes - ~~\$250~~-\$2,500 or less (See *Theft Related Offense List*)
- I Financial Transaction Card Fraud - 609.821, subd. 2(3) & (4)  
Voting Violations - 201.014, 201.016, 201.054

Proposed change to Section V. *Theft Offense List* is as follows:

It is recommended that the following property crimes be treated similarly. This is the list cited for the two Theft Crimes (~~\$250~~ - \$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

Proposed change to Section V. *Theft Related Offense List* is as follows:

It is recommended that the following property crimes be treated similarly. This is the list cited for the two Theft Related Crimes (~~\$250~~ - \$2,500 or less and over \$2,500) in the Offense Severity Reference Table.

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

Proposed change to IV. Sentencing Guidelines Grid:

	0	1	2	3	4	5	6
X	216 212-220	236 231-241	256 250-262	276 269-283	296 288-304	316 307-325	336 326-346

Proposed change to Durations for Attempted Murder 1st Degree:

	0	1	2	3	4	5	6
	130 127-133	142 138-146	154 149-159	166 161-171	178 173-183	190 185-195	202 196-208

