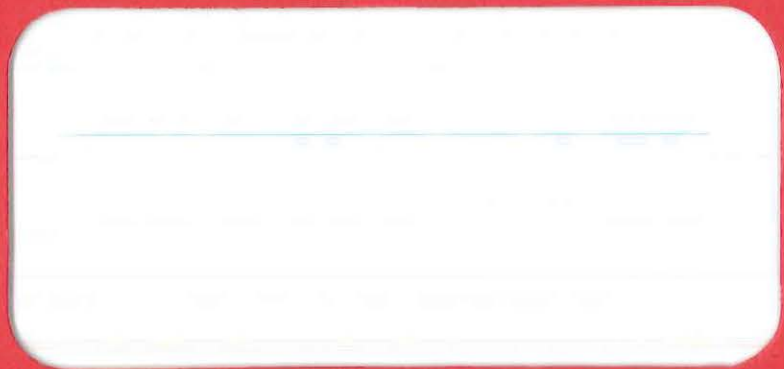
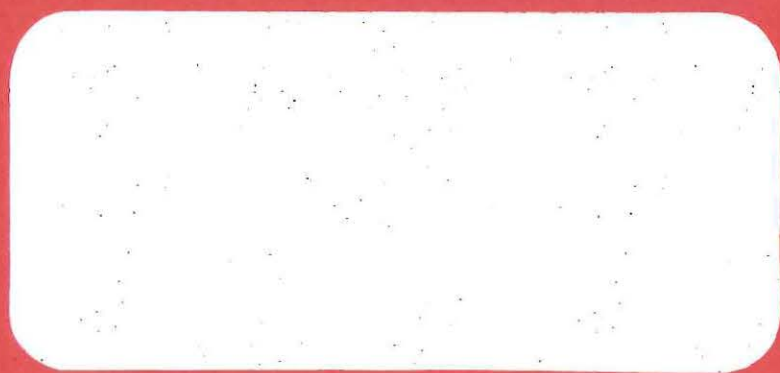


# Minnesota Sentencing Guidelines Commission





**Minnesota Sentencing Guidelines Commission**  
**REPORT TO THE LEGISLATURE**  
**January, 1990**



**MINNESOTA SENTENCING GUIDELINES COMMISSION**  
51 State Office Building  
St. Paul, Minnesota 55155

Telephone: (612) 296-0144

**Members**

*Daniel Cain, Chairman and Citizen Representative*  
*Stephen C. Rathke, County Attorney, Crow Wing County*  
*Glenn E. Kelley, Justice, Minnesota Supreme Court*  
*Fred C. Norton, Judge, Court of Appeals*  
*David E. Marsden, District Court Judge, Second Judicial District*  
*Lawrence T. Collins, District Court Judge, Third Judicial District*  
*William E. Falvey, Public Defender, Ramsey County*  
*Orville Pung, Commissioner of Corrections*  
*Von Thompson, Sheriff, Kanabec County and Law Enforcement*  
*Representative*  
*T. Williams, Citizen Representative*  
*Thomas H. Foster, Probation Officer Representative, Anoka County*

**Staff**

*Debra L. Dailey, Director*  
*Susan D. Carter, Research Analysis Specialist*  
*Anne Wall, Research Analyst*  
*Colleen McShea, Administrator*



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## I. OVERVIEW

### A. Introduction

This past year was one of major change to our criminal justice system. The Sentencing Guidelines Commission and the 1989 Legislature worked together to bring about harsher sentencing for violent and repeat violent offenders while keeping in perspective the overall impact on the criminal justice system and the need to emphasize prevention and education as well as sentencing. This report will outline the contributions made by the Sentencing Guidelines Commission as extensive changes to the Guidelines went into effect August 1, 1989.

Most of the changes to the Guidelines were already reviewed and approved by the 1989 Legislature. Other changes involved the ranking of new or amended laws or responses to legislative directives that did not require prior legislative review before becoming effective. The Commission has proposed two minor modifications that will require review by the 1990 Legislature.

While the Commission has made significant changes to certain specifics in the guidelines, the purposes of the guidelines have not changed. Guidelines continue to promote **uniformity** in sentencing so that offenders who are similarly situated are similarly sentenced. **Proportionality** continues to be emphasized, to an even greater degree after the changes, by recommending harsher sanctions for the serious violent offender and those non-violent offenders with the more serious criminal records. Also, the Guidelines, unlike mandatory minimum or other indeterminate systems, provide **truth and certainty** in sentencing because it is known what period of time will be served when the sentence is pronounced.

Finally, the Guidelines enable the Legislature to **coordinate sentencing practices with the correctional resources** that it makes available. This ability to coordinate resources was clearly demonstrated in the 1989 legislative session where the Legislature was given information on the impact of the Commission's proposals and numerous legislative proposals. The Legislature was able to determine what kinds of changes to felony sentencing were desired and could appropriate the necessary dollars to assure that resources would be available to accommodate the changes.

One of the most important messages to come out of the 1989 legislative session centers on the idea that while certain sentence recommendations under the guidelines, in the past, may have been viewed by some as lenient, sentencing guidelines systems are not inherently tough or lenient, but simply provide a legislature with a structure for determining and maintaining a rational sentencing policy. The guidelines that went into effect August 1, 1989 will certainly promote more harsh and more expensive sentences than ever before. While harsher sentencing laws have not been demonstrated to be an effective crime control policy, the message is clear that sentencing guidelines can be as tough as the state believes is necessary and is willing to pay for.

## **B. Role of the Commission**

The current Commission consists of 11 members: one justice from the Supreme Court, one judge from the Court of Appeals, two district court judges, a prosecuting attorney, a defense attorney, a probation officer representative, a law enforcement representative, the Commissioner of Corrections, and two citizen representatives, one of which is a crime victim. The current Chair of the Commission is Dan Cain, one of the citizen representatives. The Governor will be appointing or reappointing members for several positions in January of 1990. Because the Legislature has amended the law to require that the terms run coterminous with the Governor, members will have to be appointed again in January of 1991.

The current role of the Commission includes three major activities. First, the Commission monitors sentencing practices for the approximately seven thousand felony sentences imposed each year. The information is used to: 1) evaluate the sentencing guidelines; 2) identify problem areas; 3) calculate fiscal impacts of proposed bills as requested by the legislature; and 4) project prison populations. Throughout the 1989 legislative session, information was provided to the Legislature on the impact of proposed bills on sentencing and on correctional resources. This information allowed the Legislature to consider the necessity of increasing the correctional budget and to plan for the conversion of the Faribault hospital to a state prison.

Second, the Commission modifies the guidelines each year. The major area of modification is the ranking of crimes created or amended by the legislature. Modifications are also made in response to case law, to problems identified by the monitoring system, and to problems raised by various groups, organizations, and individuals. For example, the new controlled substance laws created by the 1989 Legislature had to be ranked by the Commission on the severity level scale of the guidelines.

Third, the Commission provides information and training on sentencing guidelines to criminal justice groups, the legislature, and other interested organizations. This past year extensive training was provided to probation officers to ease implementation of the changes to the guidelines. A sentencing institute, sponsored by Continuing Legal Education for the Courts, was conducted for the judges. This sentencing institute will be repeated each year or more frequently if there is an interest.

## **II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1989**

### **A. Modifications that Received Legislative Review**

The Minnesota Sentencing Guidelines Commission adopted a set of modifications to the guidelines that were the most substantive and far-reaching changes since the guidelines were first implemented in 1980. These modifications, which went into effect August 1, 1989, after they had received legislative review, addressed the following: 1) concerns regarding the appropriate sentences for violent offenders; 2) the problem of increasing prison populations; and 3) numerous problems related to the criminal history score computation that had been identified previously but not yet addressed through guidelines modifications. The Commission recognized that changes to the guidelines have implications for the entire sentencing system. Thus, the Commission chose to adopt modifications as a package; one that addressed multiple problems within the context of the goals and structure of the sentencing guidelines and the mandate of the legislature. The Commission believed this systematic approach was essential for assuring that conflicting concerns were fairly assessed and balanced and to assure modifications that were consistent with the purposes of the guidelines.

The actual language for the following modifications is found in the Appendix.

#### **1. Weighted prior felony sentences**

The modified Guidelines now weight each prior felony sentence according to its severity level. The weights are assigned as follows:

Severity levels I - II = 1/2 point;  
 Severity levels III - V = 1 point;  
 Severity levels VI - VII = 1 1/2 points;  
 Severity levels VIII - X = 2 points; and  
 Murder 1st Degree = 2 points.

The felony point total is the sum of the weights (any partial points would not result in a point). It is the intent of the Commission that prior attempted felonies carry the same weight as the completed offense. The severity level of each prior felony is based on the severity level that would apply under the current set of guidelines. For example, a prior Criminal Vehicular Operation resulting in Death, would receive a weight of 1 1/2 points because this offense is currently ranked at severity level VI. (This offense had previously been ranked at severity level V.) When the appropriate severity level of the prior felony is ambiguous, the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

The weighting scheme will assure a greater degree of proportionality in sentencing. The general idea of weighting the prior felony record has been supported by a variety of criminal justice professionals and citizens. Offenders who have a history of serious felonies are

considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses. The significance of higher severity level prior felonies is greatly enhanced. Under the new weighting scheme, offenders who have histories of violent felony behavior such as murder, criminal sexual conduct, and aggravated robbery, will consequently serve a substantially longer sentence than they would under the previous guidelines.

The weighting scheme also addresses the problems outlined in the 1989 Report to the Legislature, regarding the impact of the criminal history score on the presumptive sentence for nonviolent offenders. The increasing use of finite prison resources for nonviolent offenders has resulted in reduced prison resources for person offenders. Under the weighting scheme, the significance of low severity level prior felonies is lessened. This should result in a lower imprisonment rate for offenders with nonviolent criminal histories and assure more space to provide for the increased prison durations for serious and repeat person offenders.

## **2. Restructured the misdemeanor point**

There has been a problem with unreliable and inconsistent information regarding misdemeanors and gross misdemeanors for some time, that results in disparity in who receives a misdemeanor point under guidelines. There had been suggestions to eliminate the misdemeanor point because of wide disparity in the recording and collection of these priors. The Commission believed, however, that at this time, there was still merit in retaining the misdemeanor point because of the relevance it may have to felony activity. The Commission restructured the misdemeanor point to reduce some of the disparity that results from the wide range of misdemeanor type activity that could previously have been used to calculate the misdemeanor point. The Guidelines now contain a Misdemeanor and Gross Misdemeanor Offense List that includes only those offenses that are particularly relevant in the consideration of the appropriate guideline sentence. All felony convictions that result in a misdemeanor or gross misdemeanor sentence are also included.

The weight of prior gross misdemeanors was reduced from two units to one unit (other than DWI related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which will receive 1/2 point each under the felony weighting scheme. The weight for prior aggravated DWI's remains at two units and the weight of prior misdemeanor level DWI's has been increased to two units when the current conviction is for Criminal Vehicular Operation. Prior DWI's are particularly significant and should be emphasized under these circumstances. Four units are required to equal one point and the misdemeanor point is capped at one.

## **3. Expanded juvenile history**

The juvenile history is now capped at two points for certain offenders with prior violent offenses as a juvenile. Offenders who have at least one prior serious person offense among the other prior juvenile offenses committed after their sixteenth birthday, are eligible to receive up to two points for offenses committed and prosecuted as a juvenile. The Commission, remains concerned about the disparity between the rights afforded juveniles and adults, and differences in procedures employed in various juvenile courts. Therefore, only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of two. This effective date gives proper notice that in the future, the juvenile history can result in two criminal history points, if at least one of four or more offenses is a Murder, Assault in the 1st or 2nd Degree, Criminal Sexual Conduct in the 1st, 2nd, or 3rd Degree, or Aggravated Robbery involving a dangerous weapon.

#### 4. New mitigating factor

In the 1988 Report to the Legislature, the Commission reported that consideration was being given to a criminal history score intervention policy that would address the problem of the increasing impact that the criminal history score continues to have on who goes to prison. As was noted in previous reports to the legislature, criminal history scores can be greatly affected by the charging and plea negotiating practices of the prosecuting attorney and these practices can vary by jurisdiction. This discretion has most directly affected property offenders where the percentage who received presumptive imprisonment under the guidelines in 1987 is more than double that of 1981: 15.7% and 7.0% respectively. While some of this increase is due to a larger proportion of older offenders who have built their criminal history scores by repeated interventions of the criminal justice system, there are a significant number of property offenders who have built up their criminal history score by having committed one or two crime sprees. The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for property offenders. Rational sentencing policy requires such trade-offs, to ensure the availability of prison resources for the most serious offenders.

The intervention policy, proposed previously, would have recommended that an offender receive a certain number of prior interventions by the criminal justice system before an executed sentence would be deemed appropriate. In December, 1987, the Commission held a public hearing on this proposal. The majority of those who testified believed the policy would introduce unnecessary complication into the system. The Commission did not adopt the proposal in December of 1987 but decided to examine the policy further. Upon further consideration, the Commission decided to incorporate this policy as a reason for a dispositional departure. The nonviolent crime spree offender should perhaps be sanctioned in the community at least once or twice before a prison sentence is appropriate. At this time, the Commission believes that the judge is best able to distinguish these offenders and should be able to depart from the guidelines accordingly. Application of the policy as a reason for departure should eliminate much of the complexity that probation officers and attorneys were concerned with. Also, the use of this reason to depart from the guidelines can be monitored and evaluated. The departure reason only applies to offenders with a current conviction at severity levels 1 - 4 and who had two, one, or zero prior court interventions.

#### 5. Changes to the aggravating factors

The following aggravating factor was expanded to clarify that the sentencing judge may depart from the sentencing guidelines when the offender is a repeat sex offender as well as when an offender has otherwise injured someone both in the prior and in the current offense:

- (3) The current conviction is for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured.

#### 6. Changes to the grid - increased durations at severity levels VII and VIII

There were major increases in durations on the sentencing guidelines grid. These increases included doubling the current duration at severity level VII, criminal history score of zero, from 24 months to 48 months and increasing this number by 10 months for each criminal history point up to six. The increases also included doubling the current duration at severity level

VIII, criminal history score of zero, from 43 months to 86 months and increasing this number by 12 months for each criminal history point up to six. These increases will also have the effect of extending the duration of supervised release.

These increases to the durations for the more violent offenders, found at severity levels VII and VIII, were in response to the public concern over the length of the recommended sentences for violent offenders. The increases were also in direct response to the Attorney General's Task Force on the Prevention of Sexual Violence Against Women. The Commission chose to address all violent crimes at severity levels VII and VIII rather than separate out the violent sex offenses because they believed the other offenses ranked at these severity levels were generally as serious.

**7. Changes to the Commentary regarding dispositional departure for reasons related to the excluded factors**

In the 1988 legislative session, the Legislature passed a bill directing the Commission to study three issues. One of those issues regarded the use of social and economic factors to justify a departure from the guidelines. The Commission reported in greater detail on this issue in the Report to the Legislature on Three Special Issues, February, 1989. The following language was added to the commentary to clarify that a judge must demonstrate that the departure is not based on any of the excluded factors:

The use of the factors "amenable to probation (or treatment)" or "unamenable to probation" to justify a dispositional departure, could be closely related to social and economic factors. The use of these factors, alone, to explain the reason for departure is insufficient and the trial court shall demonstrate that the departure is not based on any of the excluded factors.

**B. Ranking of New or Amended Crimes**

The Commission ranked numerous crimes created and amended by the Legislature in the 1989 session, and these are outlined below:

**1. Controlled Substance Crimes, 1st - 5th Degree**

The 1989 Legislature restructured the controlled substance laws and defined them on the basis of 5 separate degrees. Each degree contains both sale and possession of specific drugs with a progressive amount of controlled substance involved. The following table displays the severity level ranking of each of the controlled substance crimes.

The Commission attempted to rank all offenses in each degree within the same severity level because the Commission believed that the Legislature had intended for the offenses to be equated in that manner. There is one exception with regard to Controlled Substance Crime in the Third Degree involving the possession of 3 or more grams or crack or 10 or more grams of cocaine. While the remaining Controlled Substance Crime in the Third Degree offenses are ranked at severity level VI, the two possession offenses above have been ranked at severity level VII. The Commission agreed with the Attorney General and the Hennepin County Attorney's Office that an individual who possessed at least 3 grams of crack or 10 grams of cocaine was likely to have the intent to sell. The Commission, therefore, chose to rank these two offenses at the same level as sale of these same amounts; i.e., Controlled Substance Crimes in the 2nd Degree, severity level VII.



**Summary of New Controlled Substance Provisions**  
**Severity Levels by Degree of Controlled Substance Offense**

<b><u>Degree</u></b>	<b><u>Offense Description</u></b>	<b><u>Sev. Level</u></b>
	<b><u>SALE: AGGREGATED OVER 90 DAY PERIOD</u></b>	
1st	10 or more grams crack	8
	50 or more grams cocaine/narcotic	8
0-30	50 grams or 200 or more dosage units	
4-40	PCP/hallucinogen/methamphetamine	8
	100 kilograms or more marijuana	8
	<b><u>POSSESSION</u></b>	
	25 or more grams crack	8
	500 or more grams cocaine/narcotic	8
	500 grams or 500 or more dosage units	
	PCP/hallucinogen/methamphetamine	8
	100 kilograms marijuana	8
	 <b><u>SALE: AGGREGATED OVER 90 DAY PERIOD</u></b>	
2nd	3 or more grams crack	7
	10 or more grams cocaine/narcotic	7
0-25	10 grams or 50 or more dosage units	
3-40	PCP/hallucinogen/methamphetamine	7
	50 kilograms marijuana	7
	crack/cocaine/narcotic to minor	7
	Sch. I & II Narcotics in School or Park Zone	7
	<b><u>POSSESSION</u></b>	
	6 or more grams crack	7
	50 or more grams cocaine/narcotics	7
	50 grams or 100 or more dosage units	
	PCP/hallucinogen/methamphetamine	7
	50 kilograms marijuana	7
	 <b><u>SALE</u></b>	
3rd	crack/cocaine/narcotic	6
	10 or more dosage units of Hallucinogen/PCP	6
0-20	Schedule I,II,III to minor - Not Narcotics or Marij.	6
2-30	<b><u>POSSESSION</u></b>	
	3 or more grams crack	7
	10 or more grams cocaine/narcotic	7
	50 or more dosage units of narcotics	6
	Narcotic/PCP/hallucinogen with intent to sell	6
	Sch. I & II Narcotics in School or Park Zone	6
	 <b><u>SALE</u></b>	
4th	Schedule I,II,III (except marijuana)	4
	Marijuana to minor	4
0-15	Schedule IV or V to minor	4
1-30	<b><u>POSSESSION</u></b>	
	10 or more dosage units of Hallucinogen/PCP	4
	Schedule I,II,III (except marij.) w/ intent to sell	4

CONTINUED -  
Summary of New Controlled Substance Provisions  
Severity Levels by Degree of Controlled Substance Offense

<u>Degree</u>	<u>Offense Description</u>	<u>Sev. Level</u>
	<b><u>SALE</u></b>	
5th	Marijuana	2
	Schedule IV	2
0-5	<b><u>POSSESSION*</u></b>	
1/2-10	Possession of Schedule I,II,III,IV - Includes Marijuana	2
	Also Includes: Crack/cocaine/narc./PCP/halluc.	2
	Procurement by fraud	2

\* While the Commission had previously ranked Possession with Intent to Sell Marijuana or Schedule IV controlled substances at severity level II, there is no specific provision in the new drug law that would reference these offenses.

The Commission ranked simulated controlled substance offenses at severity level I which is where these offenses were previously ranked. The penalties had not been changed by the Legislature.

## **2. Criminal Vehicular Operation Resulting in Death or Injury**

The 1989 Legislature increased the statutory maximum penalties for Criminal Vehicular Operation (CVO) Resulting in Death from 5 years to 10 years and for Criminal Vehicular Operation (CVO) Resulting in Injury from 3 years to 5 years. While this amendment to the statutory maximums indicated legislative intent to have the Commission reconsider the appropriate rankings, the Commission struggled with where to specifically rerank these offenses.

The Commission originally proposed to increase the ranking of CVO resulting in Death from severity level V to severity level VI. The Commission also originally proposed to increase the ranking of CVO resulting in Injury from severity level III to IV. The Commission was concerned that ranking CVO resulting in Death at severity level VII, with new durations at 48 months for an offender with a zero criminal history score, would perhaps result in a high downward departure rate. The Commission was particularly concerned that it might be the more socially and economically advantaged offenders who would receive the benefit of a downward departure. The Commission also believed that a probationary sentence for the first time offender could actually keep the offender under supervision for a longer period of time than a prison sentence at severity level VII. A long supervisory sentence, in addition to up to a year in jail as a condition of probation, chemical dependency treatment, restitution, and other conditions as deemed appropriate by the sentencing judge, could clearly be viewed as a more onerous sentence than a prison sentence.

Approximately 200 supporters of the MADD organization attended the public hearing held by the Commission in July of 1989. Nearly all those who addressed the Commission, including representatives from the Attorney General's Office, the Hennepin County Attorney's Office, and the Ramsey County Attorney's office, spoke in favor of a prison sentence for offenders convicted of CVO resulting in Death, even for offenders with a zero criminal history score. There were, however, differences among those testifying regarding the amount of prison time that was believed appropriate. There were suggestions made that the Commission might

consider the creation of a new severity level between the existing severity level VI and VII that could include CVO resulting in Death as well as a few of the drug crimes. Others wished to see CVO resulting in death ranked at the existing severity level VII or higher. Those that testified also recommended to the Commission that CVO resulting in Injury, be increased to severity level V rather than severity level IV.

The Commission chose to rank CVO resulting in Injury at severity level V and to rank CVO resulting in Death at severity level VI. The Commission, did however, decide to make CVO resulting in Death a presumptive prison sentence, regardless of criminal history score, with the prison duration determined by the cell times located at severity level VI. Thus, an offender convicted of CVO resulting in Death who has a criminal history score of zero, will be recommended a 21 month prison sentence under the guidelines. The Commission believes that the prison terms found at severity level VI will encourage more actual prison sentences and fewer downward departures than the more extensive prison sentences found at severity level VII.

The Commission does intend to continue to explore the idea of a new severity level. It is likely that the Commission will proceed with a project to review the entire severity level rankings in a systematic process in 1990. It is believed that this would be a useful exercise for the Commission for articulating the rationale behind severity level rankings and for establishing a more structured method for determining future rankings of new crimes.

### **3. Repealed Unauthorized Use of a Motor Vehicle, Moved to Theft**

The 1989 Legislature repealed the crime of Unauthorized Use of a Motor Vehicle (UUMV) and moved the elements that constituted this offense to the theft statute under its own subdivision; i.e., Minn. Stat. § 609.52, subd. 2 (17).

The Commission had originally proposed to rank this new theft provision at severity level IV, which is the same severity level that the existing crime of auto theft is ranked. While the Commission recognized that the legislative intent was to no longer have a severity level I UUMV offense and that the elements of UUMV were now viewed by the Legislature to be as serious as theft, the Commission chose to rank the new theft provision at severity level III. It is not uncommon for the Commission to differentiate crimes more finely than the Legislature. The Commission already ranks some of the offenses contained within the theft statute (609.52) at severity level II, some at severity level III, some at severity level IV, and some at severity level VI.

The new provision involves the use of a motor vehicle without the consent of the owner. The Commission determined that this new offense should be one severity level lower than the existing auto theft because the existing auto theft involves the intent to permanently deprive the owner of possession of the property and is, thus, more serious.

### **4. Receiving Stolen Goods**

The 1989 Legislature redefined the penalties for Receiving Stolen Goods to make them comparable to the penalties for Theft Crimes. The penalties for Precious Metal Dealers were not changed but were placed in the new statute. The Commission ranked the amended Receiving Stolen Goods offenses at the same severity levels as theft crimes; i.e., Receiving Stolen Goods over \$2,500 is ranked at severity level IV and Receiving Stolen Goods (\$2,500 or less) is ranked at severity level III. As the penalties for Precious Metal Dealers were not amended by the Legislature, the Commission did not change the severity level rankings for the precious metal offenses.

## **5. Depriving Another of Custodial or Parental Rights**

The 1989 Legislature added a new subdivision to this statute that involves the retaining of a child in this state with the knowledge that the child was removed from another state in violation of any of the other provisions of the statute. The statutory maximum is 2 years unless certain aggravating circumstances exist, then the statutory maximum is 4 years. The Commission ranked the new provision (with 2 year statutory maximum) at the same severity level as the existing provision; i.e., severity level I; and the Commission ranked the new provision with the aggravating circumstances (with 4 year statutory maximum) at severity level III.

## **6. Unlawful Acts Involving Liquor**

The 1989 Legislature created a new felony under the Liquor Act that involves an individual who promotes a party where alcohol is sold to someone under the age 21 years if that underage person becomes intoxicated and causes or suffers death or great bodily harm as a result of the intoxication. The Commission ranked the offense at severity level I, which is where the other felonies under this provision are currently ranked.

## **7. Crimes Motivated by Bias**

The 1989 Legislature created two new felonies involving crimes motivated by bias; assaults and criminal damage to property. Both offenses carry a statutory maximum penalty of one year and one day. The Commission ranked both offenses at severity level I.

## **8. Crimes Related to Dangerous Trespasses and Other Acts**

The crimes that had been included within the Minn. Stat. § 609.60, Dangerous Trespasses and Other Acts were separated into individual statutes by the 1989 Legislature. The Commission did not change the ranking of these crimes as the statutory penalties did not change. Only the title of the offenses and their statutory cites were changed on the Severity Level Reference Table to reflect the new cites.

## **9. Check Forgery, new provision**

A new provision was added to the Check Forgery statute (Minn. Stat. § 609.631) dealing with falsely endorsing or altering a check so that it purports to have been endorsed by another. This new provision was ranked at the same severity levels as the current check forgery offenses; i.e., severity level III when the amount involved is over \$2,500, severity level II when the amount involved is \$200-\$2,500, and severity level I when the amount involved is less than \$200 and it is a second or subsequent offense.

## **10. Unranked Offenses**

Several new crimes that were created by the 1989 Legislature were placed on the unranked offense list. They were placed on this list because the Commission believed there will likely be very few prosecutions for these offenses and the circumstances of the offenses will likely vary a great deal from case to case. The Commission may consider a severity level ranking in the future.

*Concealing criminal proceeds; engaging in business - 609.496; 609.497*  
*Forced execution of a declaration - 145B.10, subd. 3*  
*Racketeering, criminal penalties (RICO) - 609.904*  
*State lottery fraud - 609.651*  
*Unauthorized computer access - 609.891*  
*Warning subject of investigation - 609.4971*  
*Warning subject of surveillance or search - 609.497*

Also included in the unranked offense list are two new subdivisions added to the Hazardous Wastes statute. In addition, the crime of Subdivided land fraud, Minn. Stat. § 83.43, was also added to the unranked offense list as it had been inadvertently left off the unranked list.

### **C. Other Modifications not Requiring Legislative Review**

The Commission also adopted several changes to the guidelines that do not require legislative review; either because the Legislature directed the Commission to make certain changes to the guidelines or because the change involved a clarification and did not actually change the guidelines. See the Appendix for the specific language changes.

#### **1. Language Clarification Regarding 10 Year Decay**

The Commission added language to clarify the application of the ten year decay factor for prior misdemeanors and gross misdemeanors. The language now makes it clear that the offense would decay if "a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense."

#### **2. Language Clarification to Section II, C. Presumptive Sentence**

Clarified that the presumptive disposition is prison for a second or subsequent drug sale when the offender has a prior severity level VI or above drug sale offense.

#### **3. Added Two Additional Aggravating Factors**

Two additional factors were added to the nonexclusive list of Aggravating Factors. The first factor was added as required by the Legislature to allow judges to depart from the guidelines when the controlled substance offense involved minors and was committed in a park zone or school zone. The Commission is to report to the Legislature on or before February 1, 1991 on the number and types of cases involving a departure based on this reason.

The second factor was added to address the new sentencing provision for "patterned sex offenders" passed by the 1989 Legislature. The statute states that the use of this provision would constitute a departure from the guidelines. The Commission decided to reference this provision in its list of aggravating factors and also added a comment describing the provision.

#### **4. Comments Added to Section II. E. Mandatory Sentences**

The Commission added a comment to the section dealing with mandatory minimum sentencing to clarify that the presumptive sentence is determined by the statutory mandatory sentence for the new crimes involving certain "heinous" murders and certain sex offenders.

The Commission also added a comment to clarify the situations where mandatory minimum sentencing provisions may apply to a case.

In addition, the Commission placed a reference on the Sentencing Guidelines Grid to "see section II. E. Mandatory Sentences for policy regarding those sentences controlled by law."

#### **5. Clarification of "target release date", Section II. F. 03**

The Commission clarified the meaning of target release date in the following comment:

*If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commission of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.*

#### **6. Proportionality Concerns and Stayed Sentences**

The 1989 Legislature passed a law which states that an offender may not demand execution of sentence if the offender will serve less than nine months at the state institution. This new law could raise proportionality concerns in that offenders could be given a more onerous sanction on a stayed sentence than would be recommended by the guidelines if the offender were sentenced to prison. Before this law, offenders had the ability to appeal a stayed sentence if it was believed to be more onerous and could request to have their prison term executed. Because this option is no longer available for certain offenders, the Commission added commentary language to stress the importance of pronouncing nonimprisonment sanctions which are proportional to the severity of the offender's conviction offense and prior criminal record. The following language was adopted:

*III.A.202. While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing judge to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states that an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the prior criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive guidelines duration.*

## **7. Legislative Directive to Increase Durations for Murder**

The 1989 Legislature directed the Commission to increase the presumptive duration for intentional 2nd Degree Murder to 306 months for an offender with a criminal history score of zero. The Commission was also directed to proportionally increase the presumptive sentences for the higher criminal history scores, attempted 1st Degree Murder, unintentional 2nd Degree Murder and 3rd Degree Murder. At severity level X (intentional 2nd Degree Murder), the presumptive duration at the zero criminal history score is now 306 months, and increases across criminal history by 20 months per history point. At severity level IX (unintentional 2nd Degree Murder and 3rd Degree Murder), the presumptive duration at the zero criminal history score is now 150 months and increases across criminal history by 15 months per history point. The new duration for Attempted 1st Degree Murder is 180 months at the zero criminal history score and increases 10 months across criminal history per history point. See the Appendix for the specific durations across criminal history.

## **III. 1989 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW**

There are only two relatively minor modifications that have been adopted by the Commission and will need to be reviewed by the 1990 Legislature. There were two offenses that had been inadvertently left unranked by the Commission. The first is Minn. Stat. § 268.18, subd. 3, which involves false representation with regard to unemployment benefits. This offense was viewed by the Commission to be similar to Wrongfully Obtaining Assistance and violations of the Federal Food Stamp Program. These similar offenses are included on the Theft Related Offense List and, therefore, the Commission has adopted the proposal to add this unemployment fraud offense to the Theft Related Offense List. Theft Related offenses are ranked at severity level II or III, depending on the amount of loss involved.

The second offense the Commission had inadvertently left unranked were two sub-clauses included within the theft statute. The overall clause deals with theft by false representation and the first sub-clause (a) specifically deals with the use of a check. This sub-clause (a) has been ranked on the Theft Related Offense List. The unranked sub-clauses deal with (b) failure to perform a promise and (c) falsely representing a medical assistance claim. The Commission adopted the proposal to also include the sub-clauses (b) and (c) on the Theft Related Offense List. As noted above, Theft Related offenses are ranked at severity level II or III, depending on the amount of loss involved.

#### **IV. IMPACT OF 1989 MODIFICATIONS ON CORRECTIONAL RESOURCES**

##### **A. State Prisons**

The modifications to the guidelines described in this report will have the effect of increasing the presumptive durations for offenders convicted of offenses ranked at severity levels VI, VIII, IX, X and for attempted 1st Degree Murder offenses and increasing the imprisonment rate and/or the presumptive durations for offenders who have criminal records reflecting felony convictions at severity levels VI through X. The modifications will also have the effect of reducing the impact of criminal history scores that reflect severity level I and II convictions and/or misdemeanor convictions. In addition, the number of criminal history points allowable for juvenile offenses when there is at least one prior offense involving a serious crime against a person increases to two.

Certain legislative changes will also affect prison populations apart from any Commission action and include the special sentencing provision created for patterned sex offenders, a departure factor for dangerous offenders, and a departure factor for career criminals.

Commission staff in conjunction with the Department of Corrections have calculated new prison population projections that attempt to take into account the impact of the guidelines changes and the legislative changes in addition to taking into account the volume increases in cases sentenced by the courts. An explanation of these prison population projections is presented below.

The changes to the guidelines also included modifying an aggravating factor and adding a mitigating factor to the nonexclusive list of reasons for departure. The projection below does not include any speculation on the possible impact of adding these factors to the list of departure reasons. The estimate is expected to be conservative because it does not take into account the possible impact of consecutive sentences.

The Sentencing Guidelines Commission and the Department of Corrections work together to prepare prison population projections. The projections that are currently being used are based on the institutional population as of 8/8/89 (source: Department of Corrections) and 1988 sentencing data (source: Sentencing Guidelines Commission). The projections for males include an estimated 45 interstate cases. The projections also include the following assumptions:

- 1) A 5% increase in court volume in 1990 and 1991.
- 2) There will be 125 males and 20 females on work release.



- 3) For the departure factors added to statute by the legislature, the projections include an estimated potential impact of 12 beds by 7/1/91 and up to 125 beds by 7/1/94.

The growth in the **male prison population** is a combination of increases in the court volume with regard to sentencing and the effects of the legislative and guidelines changes. The prison population for males is projected to grow by nearly 1000 over the next five years. The growth is projected to continue to another 350 by the end of the decade. Although the simulation model used to project prison populations does not extend beyond 10 years, we can expect prison populations to continue to grow for many years. Actions taken by the Legislature and the Commission will affect sentences for the next three decades, assuming no action is taken to alter the new policies.

Although prison population growth for males is dramatic, particularly in the first two years, the prison populations would be even greater without the Commission policies that were adopted to balance the increased sentences for violent offenders. The Commission's policy change regarding a proportional weighting scheme for prior felonies that included a 1/2 point weight for prior severity level I and II felony convictions along with the policy change to the misdemeanor point, holds the population growth for males down by approximately 150 to 200 in the first 2 years. This is a critical difference, given the time it takes to bring on new prison space.

The **female prison population** will also grow over the next five years, but because the number of females in prison is relatively small to begin with, it is more difficult to analyze trends and changes in population. It is apparent, however, that the prison population increases for females are not a result of legislative and guidelines changes. It appears that the populations are growing due to increased numbers of commitments to prison, primarily as a result of probation revocations. It also appears that there has been some build up of female offenders in prison with long sentences which is also contributing to the bulge in the population in 1991.

July through October of 1989 indicated an even greater level of female commitments to prison. If that trend continues, the prison population levels will be significantly greater than those projected below in the first table showing female populations. A second table shows a second possible scenario for female prison populations should this four month trend represent a continuing change in sentencing practices. In this second scenario, the increase in population is dramatic. The female commitment level will continue to be closely monitored by the Department of Corrections.

The tables presenting the projected prison populations for males and females are displayed below.

**MALE INSTITUTION POPULATION PROJECTIONS**  
October, 1989

<u>YEAR</u>	<u>MONTH</u>	<u>PROJECTED NUMBER</u>	<u>TOTAL INCREASE</u>
1989	October	2772	
1990	January	2860	+ 88
	April	2880	+ 108
	July	2900	+ 128
	October	3120	+ 348
1991	January	3250	+ 478
	April	3270	+ 498
	July	3280	+ 508
	October	3280	+ 508
1992	January	3280	+ 508
	April	3250	+ 478
	July	3330	+ 558
	October	3440	+ 668
1993	January	3490	+ 718
	April	3470	+ 698
	July	3530	+ 758
	October	3600	+ 828
1994	January	3700	+ 928
	April	3710	+ 938
	July	3740	+ 968

**FEMALE INSTITUTION POPULATION PROJECTIONS**  
October, 1989

<u>YEAR</u>	<u>MONTH</u>	<u>PROJECTED NUMBER</u>	<u>TOTAL INCREASE</u>
1989	October	147	
1990	January	150	+3
	April	149	+2
	July	140	-7
	October	165	+18
1991	January	189	+42
	April	188	+41
	July	167	+20
	October	155	+8
1992	January	147	0
	April	141	-6
	July	147	0
	October	156	+9
1993	January	158	+11
	April	159	+12
	July	157	+10
	October	164	+17
1994	January	157	+10
	April	152	+5
	July	159	+12

**FEMALE INSTITUTION POPULATION PROJECTIONS**  
**Assumes Increased Commitments**  
 October, 1989

<u>YEAR</u>	<u>MONTH</u>	<u>PROJECTED NUMBER</u>	<u>TOTAL INCREASE</u>
1990	January	169	+22
	July	182	+35
1991	January	251	+104
	July	226	+79
1992	January	204	+57
	July	205	+58
1993	January	218	+71
	July	215	+68
1994	January	218	+71
	July	220	+73

**B. Local Resources**

The Sentencing Guidelines Commission did adopt policy changes to the guidelines that will result in fewer offenders, with low severity level prior felonies, being recommended a prison sentence under guidelines. The effect of these policy changes could result in a higher proportion of certain non-violent offenders receiving community sanctions rather than prison. The actual impact of this change on local resources is difficult to assess. There is no sentencing structure for nonimprisonment sanctions and there is a lack of information regarding the specific conditions of probation that are required of offenders who are given stayed sentences. Thus, only gross estimates can be made of the impact of the guidelines changes on local resources, and only with respect to jail use.

It is probable that judges would likely impose some local jail time on the offenders affected by the guidelines changes as they would have some criminal history. However, there are other sentencing alternatives that judges could use on offenders who have no criminal history to open space at the jails. Sentencing guidelines data show that offenders may receive jail up to one year in even the lowest severity levels and with no criminal history score. If, for example, judges used community work service or fines along with a minimal amount of incarceration, space would be available to incarcerate the offenders affected by the guidelines changes.

The following table displays the number of cases from each county that are currently receiving presumptive prison sentences but would receive presumptive stayed sentences if they commit their offense after August 1, 1989. Also displayed, is the possible impact on jails if all of these offenders who would not be going to prison were to received some jail time as a condition of probation. Three scenarios of actual jail time served are presented below: 3 months of jail, 6 months of jail, and 9 months of jail. The table displays the annual average number of jail beds needed per day. The 9 month scenario is likely to be the worst case as approximately 75% of the offenders would have less than a year to serve were they to be sent to prison. It would not be a proportional period of incarceration for these offenders to be required to serve more time in the local jail than they would serve if sentenced to prison.

There were some counties where no offenders were identified as moving to the presumptive stay portion of the grid due to the guidelines changes, therefore, there would be no likely impact on the local resources. Included in this group of counties were: Aitkin, Becker, Big Stone, Carlton, Carver, Chippewa, Chisago, Clearwater, Cook, Cottonwood, Crow Wing, Fillmore, Grant, Houston, Isanti, Itasca, Kittson, Koochiching, Lac Qui Parle, Lake of the Woods, LeSueur, Lincoln, Lyon, Mahnomen, Martin, Meeker, Murray, Norman, Pipestone, Pope, Red Lake, Renville, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Watonwon, Winona, and Yellow Medicine.

The Commission believes it is important to realize that changes to the guidelines affect both state and local resources and that even this limited information on the impact should be reported to the legislature. This information is essential to the legislature in their determination for state correctional funding as well as community correctional funding.

The Commission also plans to more closely examine the impact of felony sentencing on local correctional resources and to develop recommendations to the Legislature on how to address the local needs. The mini-study the Commission will be conducting on nonimprisonment sanctions (see section V. UPCOMING STUDIES below) will help to highlight the needs. This effort is particularly important given the problem of drug offenders and the recommendations made in the report by the Governor's Select Committee on the Impact of Drugs on Crime, Education, and Social Welfare. The Commission believes its efforts in the area of local correctional resources should be coordinated with this Committee, the Office of Drug Policy, and the Legislature.

Number of Possible Offenders Moving from Prison to Probation  
due to Adopted Guidelines Changes

Possible Impact on Jails if 3, 6, or 9 months Served

Based on 1988 Monitoring Data

<u>County</u>	<u>Number of Offenders</u>	<u>Average Number of Jail Beds Needed per day:</u>		
		<u>3 Months</u>	<u>6 months</u>	<u>9 months</u>
Anoka	15	3.7	7.4	11.1
Beltrami	2	0.5	1.0	1.5
Benton	3	.7	1.5	2.2
Blue Earth	2	.5	1.0	1.5
Brown	1	.2	.5	.7
Cass	2	.5	1.0	1.5
Clay	3	.7	1.5	2.2
Dakota	6	1.5	3.0	4.4
Dodge	2	.5	1.0	1.5
Douglas	1	.2	.5	.7
Faribault	1	.2	.5	.7
Freeborn	1	.2	.5	.7
Goodhue	1	.2	.5	.7
Hennepin	54	13.3	26.6	39.9
Hubbard	1	.2	.5	.7
Jackson	1	.2	.5	.7
Kanabec	1	.2	.5	.7
Kandiyohi	1	.2	.5	.7
Lake	1	.2	.5	.7
McLeod	1	.2	.5	.7
Marshall	2	.5	1.0	1.5
Mille Lacs	1	.2	.5	.7
Morrison	2	.5	1.0	1.5
Mower	1	.2	.5	.7
Nicollet	1	.2	.5	.7
Nobles	1	.2	.5	.7
Olmsted	1	.2	.5	.7
Otter Tail	3	.7	1.5	2.2
Pennington	1	.2	.5	.7
Pine	2	.5	1.0	1.5
Polk	1	.2	.5	.7
Ramsey	33	8.1	16.3	24.4
Redwood	1	.2	.5	.7
Rice	1	.2	.5	.7
St. Louis	5	1.2	2.5	3.7
Scott	2	.5	1.0	1.5
Sherburne	4	1.0	2.0	3.0
Stearns	6	1.5	3.0	4.4
Waseca	1	.2	.5	.7
Washington	6	1.5	3.0	4.4
Wilkin	1	.2	.5	.7
Wright	1	.2	.5	.7
<b>TOTAL</b>	<b>177</b>	<b>43.6</b>	<b>87.3</b>	<b>130.9</b>

## **V. UPCOMING STUDIES**

The Legislature directed the Commission to conduct two studies, one on nonimprisonment sanctions and one on weapon use. The Commission will be conducting the study on nonimprisonment sanctions during the first half of 1990 and will look at the issue of weapon use and sentencing in the latter part of 1990. Reports on these studies are required by February of 1991.

In addition, Commission staff is preparing a summary report on 1988 sentencing practices that should be available by the beginning of the 1990 Legislative session. This report will include a special study on drug offenders that more closely examines the type and amount of drug, the charging practices, and the use of specific nonimprisonment sanctions such as chemical dependency evaluations, treatment, and drug testing.

### **Local Correctional Resources; Data Collection; Needs Assessment**

The Legislature provided funding to the Sentencing Guidelines Commission to determine how more detailed information can be gathered on a routine basis on local sentencing practices, usage of local correctional resources, and local alternatives to incarceration for convicted felons. The Commission will combine the \$20,000 state allocation with a federal grant of \$6,000 from the Bureau of Justice Assistance "Structured Sentencing Program". The funding will be used to conduct a multi-faceted study which will include:

- An inquiry of county probation offices regarding the types of nonimprisonment sanctions used; available resources, including information on costs, capacities, programs; and what programs and resources have been effective and whether there is interest in expanding. October 1989 - June 1990
- Work with the Department of Corrections and the local jurisdictions to explore how information can be gathered on a routine basis; particularly on the use of jail but also treatment, community work service, and other nonimprisonment sanctions. August 1989 - continue
- Conduct an indepth study on a sample of cases from a sample of Minnesota counties. This study will provide individual level data on the specific nonimprisonment sanctions imposed. Offender and offense characteristics will also be collected. The funding will be used to hire two researchers to collect this data as well as assist in the inquiry of the probation offices. October 1989 - June 1990

- Explore how information on local sentencing practices can be effectively disseminated to all trial court judges for use as reference to encourage reduction of disparities in nonimprisonment sanctions. October 1989 - continue
- Report to the Legislature by February 1991 on the information obtained in the study.



## **APPENDIX**



**MINNESOTA SENTENCING GUIDELINES COMMISSION**  
**SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES**  
**Includes All Modifications Effective August 1, 1989**

**Adopted Modifications to Comment II.A.03.(Exclusions from Offense Severity Reference Table):**

1. Abortion - 617.20; 617.22; 145.412
2. Aiding suicide - 609.215
3. Altering engrossed bill - 3.191
4. Animal fighting - 343.31
5. Bigamy - 609.355
6. Cigarette tax and regulation violations - 297.12, subd. 1
7. Collusive bidding/price fixing - 325D.53, subds. 1(3), 2 & 3
8. Concealing criminal proceeds; engaging in business - 609.496; 609.497
- ~~8-9.~~ Corrupting legislator - 609.425
- ~~9-10.~~ Criminal sexual conduct, third degree - 609.344, subd. 1(a)  
(By definition the perpetrator must be a juvenile.)
- ~~10-11.~~ Criminal sexual conduct, fourth degree - 609.345, subd. 1(a)  
(By definition the perpetrator must be a juvenile.)
- ~~11-12.~~ Falsely impersonating another - 609.83
13. Forced execution of a declaration - 145B.10, subd. 3
- ~~12-14.~~ Gambling regulation violations - 349.22, subd. 3
- ~~13-15.~~ Hazardous wastes - 609.671; 115.071, subd. 2(2)
- ~~14-16.~~ Horse racing-prohibited act - 299J.29 240.25
- ~~15-17.~~ Killing a police dog - 609.596, subd. 1
- ~~16-18.~~ Incest - 609.365
- ~~17-19.~~ Metal penetrating bullets - 624.74
- ~~18-20.~~ Misprision of treason - 609.39
- ~~19-21.~~ Motor vehicle excise tax - 297B.10
- ~~20-22.~~ Obscene materials; distribution - 617.241, subd. 4
- ~~21-23.~~ Obstructing military forces - 609.395
- ~~22-24.~~ Penalties (sales tax violations) - 297A.39
- ~~23-25.~~ Pipeline safety - 299J.07, subd. 2
- ~~24-26.~~ Police radios during commission of crime - 609.856
- ~~25-27.~~ Possession of pictorial representations of minors - 617.247
- ~~26-28.~~ Prohibiting promotion of minors to engage in obscene works - 617.246
29. Racketeering, criminal penalties (RICO) - 609.904
- ~~27-30.~~ Sales tax without permit, violations - 297A.08
31. State lottery fraud - 609.651
32. Subdivided land fraud - 83.43
- ~~28-33.~~ Treason - 609.385
34. Unauthorized computer access - 609.891
35. Warning subject of investigation - 609.4971
36. Warning subject of surveillance or search - 609.497
- ~~29-37.~~ Wire communications violations - 626A.02, subd. 4; 626A.03, subd. 1(b)(ii); 626A.26, subd. 2(1)(ii)

### Adopted Modifications for Weighting of Prior Felonies

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~~ a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing.
  - a. The weight assigned to each prior felony sentence is determined according to its severity level, as follows:
    - Severity Level I - II = 1/2 point;
    - Severity Level III - V = 1 point;
    - Severity Level VI - VII = 1 1/2 point;
    - Severity Level VIII - X = 2 points; and
    - Murder 1st Degree = 2 points.
  - b. 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 only the offense at the highest severity level is considered;
  - c. An offender shall not be assigned more than two points Only the two offenses at the highest severity levels are considered for prior multiple sentences arising out of a single course of conduct in which there were multiple victims;
  - d. 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;
  - e. Prior felony sentences or stays of imposition following felony convictions will not be used in computing the criminal history score if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.

#### 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~~ a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. The felony point total is the sum of these weights. No partial points are given – thus, a person with less than a full point is not given that point. For example, an offender with a total weight of 2 1/2 would have 2 felony points. The Commission determined that it was important to establish a weighting scheme for prior felony sentences to assure a greater degree of proportionality in the current sentencing. Offenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses. The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.*

In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, ~~the offender would receive one point~~ only the offense at the highest severity level should be considered. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day before the same judge, sentencing shall occur in the order in which the offenses occurred. The dates of the offenses shall be determined according to the procedures in II.A.02.

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

**II.B.102.** In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 609.585, under which persons committing theft or another felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and the other felony, or a conviction under Minn. Stat. § 609.251 under which persons who commit another felony during the course of a kidnapping can be convicted of and sentenced for both offenses. In all other instances of multiple convictions arising from a single course of conduct, where there is a single victim, persons may be sentenced on only one offense. For purposes of computing criminal history, the Commission decided that consideration should only be given to the most severe offense when there are prior multiple sentences under provisions of Minn. Stats. § 609.585 or 609.251 ~~should also receive one point.~~ This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to that statute, to prevent systematic manipulation of Minn. Stats. § 609.585 or 609.251 in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, when single victims are involved.

When multiple current convictions arise from a single course of conduct and multiple sentences are imposed on the same day pursuant to Minn. Stats. § § 609.585 or 609.251, the conviction and sentence for the "earlier" offense should not increase the criminal history score for the "later" offense.

**II.B.103.** To limit the impact of past variability in prosecutorial discretion, the Commission ~~placed a limit of two points on computing~~ decided that for prior multiple felony sentences arising out of a single course of conduct in which there were multiple victims, consideration should be given only for the two most severe offenses. For example, if an offender had robbed a crowded liquor store, he could be convicted of and sentenced for the robbery, as well as one count of assault for every person in the store at the time of the offense. Past variability in prosecutorial charging and negotiating practices could create substantial variance in the number of felony sentences arising from comparable criminal behavior. To prevent this past disparity from entering into the computation of criminal histories, and to prevent manipulation of the system in the future, the Commission ~~placed a limit of two points~~ limited consideration to the two most severe offenses in such situations. This still allows differentiation between those getting multiple sentences in such situations from those getting single sentences, but it prevents the perpetuation of gross disparities from the past.

~~The two point~~ This limit in calculating criminal history when there are multiple felony sentences arising out of a single course of conduct with multiple victims also applies when such sentences are imposed on the same day.

**II.B.108.** A felony sentence imposed for a criminal conviction treated pursuant to Minn. Stat. Ch. 242 (Youth Conservation Commission and later Youth Corrections Board, repealed 1977) shall be assigned ~~one felony point~~ its appropriate weight in computing the criminal history score according to procedures in II.B.1.

**II.B.109.** An offense upon which a judgment of guilty has not been entered before the current sentencing; i.e., pursuant to Minn. Stat. § 152.18, subd. 1, shall not be assigned ~~a felony point~~ any weight in computing the criminal history score.

### Adopted Modifications to the Misdemeanor Point

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, which are assigned two units each, 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 and gross misdemeanors listed in the Misdemeanor and Gross Misdemeanor Offense List (see Section V.) or ordinance misdemeanors that conform substantially to a statutory misdemeanor shall be used to compute units. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units.
  - b. When multiple sentences for a single course of conduct are given pursuant to Minn. Stat. § 609.585, ~~and the most serious conviction is for a gross misdemeanor~~, no offender shall be assigned more than ~~two~~ one units.
  - 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, to the sentencing date for the current offense. However, this does not apply to misdemeanor sentences that result from successful completion of a stay of imposition for a felony conviction.

#### Comment

**II.B.301.** *The Commission established a measurement procedure based on units for misdemeanor and gross misdemeanor sentences which are totaled and then converted to a point value. The purpose of this procedure is to provide different weightings for convictions of felonies, gross misdemeanors, and misdemeanors. Under this procedure, misdemeanors ~~are assigned one unit~~, and gross misdemeanors are assigned ~~two~~ one units. An offender must have a total of four units to receive one point on the criminal history score. No partial points are given—thus, a person with three units is assigned no point value. As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, the traffic offenses of driving while intoxicated and aggravated driving while intoxicated have particular relevance to the offense of criminal vehicular operation. Therefore, prior misdemeanor and gross misdemeanor sentences for DWI and aggravated DWI shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular operation. These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each. The Commission decided to reduce the weight of prior gross misdemeanors (other than DWI related offenses) in order to create a more proportional weighting scheme with respect to the weight of prior felonies at severity levels I and II which receive 1/2 point each. In addition, with the continued creation of new gross misdemeanors that are by definition nearly identical to misdemeanors, it is becoming increasingly difficult to discern whether a prior offense is a gross misdemeanor or a misdemeanor. The Commission believes that in light of these recording problems, a weighting*

scheme that sets the same weight for both misdemeanors and gross misdemeanors is more consistent and equitable.

The offense of fleeing a peace officer in a motor vehicle (Minn. Stat. § 609.487) is deemed a non traffic offense. Offenders given a prior misdemeanor or gross misdemeanor sentence for this offense shall be assigned one ~~and two units respectively~~ in computing the criminal history. (Offenders with a prior felony sentence for fleeing a peace officer in a motor vehicle shall be assigned ~~one point~~ the appropriate weight for each sentence subject to the provisions in II.B.1.).

II.B.302. The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. This was done because with no limit on point accrual, persons with lengthy, but relatively minor, misdemeanor records could accrue high criminal history scores and, thus, be subject to inappropriately severe sentences upon their first felony conviction. ~~With the exception of offenses with monetary thresholds~~ The Commission limited consideration of misdemeanors to those which are particularly relevant misdemeanors under existing state statute, or ordinance misdemeanors which substantially conform to existing state statutory misdemeanors. This was done to prevent criminal history point accrual for misdemeanor convictions which are The Commission believes that only certain misdemeanors and gross misdemeanors are particularly relevant in determining the appropriate sentence for the offender's current felony conviction(s). Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines. The Commission has not included certain common misdemeanors in the Misdemeanor and Gross Misdemeanor Offense List because it is believed that these offenses are not particularly relevant in the consideration of the appropriate guideline sentence. This limiting was also done to prevent criminal history point accrual for misdemeanor convictions which are unique to one municipality, or for local misdemeanor offenses of a regulatory or control nature, such as swimming at a city beach with an inner tube. The Commission decided that using such regulatory misdemeanor convictions was inconsistent with the purpose of the criminal history score. In addition, several groups argued that some municipal regulatory ordinances are enforced with greater frequency against low income groups and members of racial minorities, and that using them to compute criminal history scores would result in economic or racial bias. For offenses defined with monetary thresholds, the threshold at the time the offense was committed determines the offense classification for criminal history purposes, not the current threshold.

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

~~II.B.305. If an offender was convicted of a gross misdemeanor, but given a misdemeanor sentence, that is counted as a misdemeanor in computing the criminal history score.~~

II.B.3065. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or which are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02, will not be used to compute the criminal history score.

II.B.3076. Misdemeanor convictions under Minn. Stat. § 340A.503, with the exception of subd. 2 (1), will not be used to compute the criminal history score. Because it is not the nature of the act but the age of the offender that determines the crime and because the record of violation cannot be disclosed absent an order by the court, the Commission believes it is inappropriate to include these convictions in the criminal history score.

### Adopted Modifications to the Juvenile Point

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that would have been felonies if committed by an adult, provided that:
  - a. Findings were made by the juvenile court pursuant to an admission in court or after trial;
  - b. Each offense represented a separate behavioral incident or involved separate victims in a single behavioral incident;
  - c. The juvenile offenses occurred after the offender's sixteenth birthday;
  - d. The offender had not attained the age of twenty-one at the time the felony was committed for which he or she is being currently sentenced; and
  - e. No offender may receive more than one point for offenses committed and prosecuted as a juvenile unless at least one of the offenses is Murder, Assault in the 1st or 2nd Degree, Criminal Sexual Conduct in the First, Second, or Third Degree or Aggravated Robbery involving a dangerous weapon. No offender may receive more than two points for offenses committed and prosecuted as a juvenile.

#### Comment

**II.B.405.** Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile offenses to equal one point on the criminal history score, and that no offender may receive more than one point on the basis of prior juvenile offenses, unless at least one of the prior offenses was a serious violent offense, subject to provision II.B.4.e., upon which the offender may receive no more than two points. Again, no partial points are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score. The ~~one~~ two point limit was deemed consistent with the purpose of including the juvenile record in the criminal history--to distinguish the young adult felon with no juvenile record of felony-type behavior from the young adult offender who has a prior juvenile record of repeated felony-type behavior. The ~~one~~ two point limit also was deemed advisable to limit the impact of findings obtained under a juvenile court procedure that does not afford the full procedural rights available in adult courts. The former one point limit was expanded to two points to differentiate the youthful violent offender.

**II.B.406.** Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of two. The Commission was concerned with the disparities in the procedures used in the various juvenile courts. This effective date gives proper notice that in the future, the juvenile history can result in two criminal history points, if at least one of the offenses is an offense listed in section 4.e.



### Adopted Modifications to Section II. C. Presumptive Sentence

When the current conviction offense is criminal vehicular operation resulting in death (Minn. Stat. § 609.21, subd. 1 & 3), the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

When the current conviction offense is burglary of an occupied dwelling (Minn. Stat. § 609.582, subd. 1 (a)) and there was a previous adjudication of guilt for a felony burglary before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid. Similarly, when the current conviction offense is ~~sale of~~ a severity level VI drug crime or sale of cocaine and there was a previous adjudication of guilt for a ~~sale of a~~ severity level VI or above drug crime or sale of cocaine before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.

#### Comment

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

*The dispositional policy adopted by the Commission was designed so that scarce prison resources would primarily be used for serious person offenders and community resources would be used for most property offenders. The Commission believes that a rational sentencing policy requires such trade-offs, to ensure the availability of correctional resources for the most serious offenders. For the first year of guidelines operation, that policy was reflected in sentencing practices. However, by the third year of guideline operation, the percentage of offenders with criminal history scores of four or more had increased greatly, resulting in a significant increase in imprisonment for property offenses. Given finite resources, increased use of imprisonment for property offenses results in reduced prison resources for person offenses. The allocation of scarce resources ~~will be~~ has been monitored and evaluated on an ongoing basis by the Commission. The Commission has determined that assigning particular weights to prior felony sentences in computing the criminal history score will address this problem. The significance of low severity level prior felonies is reduced, which should result in a lower imprisonment rate for property offenders. The significance of more serious prior felonies is increased, which should result in increased prison sentences for repeat serious person offenders.*

**Adopted Modifications to Commentary to Address  
Dispositional Departures for Reasons Related to the Excluded Factors**

Comment

*II.D.101. The Commission believes that sentencing should be neutral with respect to offenders' race, sex, and income levels. Accordingly, the Commission has listed several factors which should not be used as reasons for departure from the presumptive sentence, because these factors are highly correlated with sex, race, or income levels. ~~The Commission's study of Minnesota sentencing decisions indicated that, unlike many other states, these factors generally were not important in dispositional decisions. Therefore, their exclusion as reasons for departure should not result in a change from current judicial sentencing practices. The only excluded factor which was associated with judicial dispositional decisions was employment at time of sentencing. In addition to Employment is excluded as a reason for departure not only because of its correlation with race and income levels, but also because this factor was excluded because it is manipulable--offenders could lessen the severity of the sentence by obtaining employment between arrest and sentencing. While it may be desirable for offenders to obtain employment between arrest and sentencing, some groups (those with low income levels, low education levels, and racial minorities generally) find it more difficult to obtain employment than others. It is impossible to reward those employed without, in fact, penalizing those not employed at time of sentencing. The use of the factors "amenable to probation (or treatment)" or "unamenable to probation" to justify a dispositional departure, could be closely related to social and economic factors. The use of these factors, alone, to explain the reason for departure is insufficient and the trial court shall demonstrate that the departure is not based on any of the excluded factors.~~*

**Adopted Modifications to Add Mitigated Factor  
Regarding Crime Spree Offenders**

2. Factors that may be used as reasons for departure: The following is a nonexclusive list of factors which may be used as reasons for departure:

a. Mitigating Factors:

- (1) The victim was an aggressor in the incident.
- (2) The offender played a minor or passive role in the crime or participated under circumstances of coercion or duress.
- (3) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.
- (4) The offender's presumptive sentence is a commitment to the commissioner but not a mandatory minimum sentence, and either of the following exist:
  - (a) The current conviction offense is at severity level I or II and the offender received all of his or her prior felony sentences during less than three separate court appearances; or
  - (b) The current conviction offense is at severity level III or IV and the offender received all of his or her prior felony sentences during one court appearance.
- ~~(4)~~(5) Other substantial grounds exist which tend to excuse or mitigate the offender's culpability, although not amounting to a defense.

**Adopted Modifications to Aggravating Factors****b. Aggravating Factors:**

- (3) The current conviction is for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured.
- (8) The offender was convicted of a controlled substance offense in violation of chapter 152 and the offense was committed in a park zone or in a school zone as defined in chapter 152.01.  
This aggravating factor shall not apply to an offender convicted of unlawfully possessing controlled substances in a private residence located within a school zone or a park zone if no person under the age of 18 was present in the residence when the offense was committed.  
This aggravating factor shall not apply to an offender convicted under chapter 152.022, subdivision 1, clause (5), (ii) or under chapter 152.023, subdivision 2, clause (5).
- (9) Offender is a "patterned sex offender" (See Minn. Stat. § 609.1352).

## Adopted Modifications to Commentary Regarding Departures

### Comment

II.D.202. The Commission recognizes that the criminal history score does not differentiate between the crime spree offender who has been convicted of several offenses but has not been previously sanctioned by the criminal justice system and the repeat offender who continues to commit new crimes despite receiving previous consequences from the criminal justice system. The Commission believes the nonviolent crime spree offender should perhaps be sanctioned in the community at least once or twice before a prison sentence is appropriate. At this time, the Commission believes that the judge is best able to distinguish these offenders and can depart from the guidelines accordingly.

II.D.2023. An aggravated sentence would be appropriate when the current conviction is for a Criminal Sexual Conduct offense or for an offense in which the victim was injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or for an offense in which the victim was injured even if the prior felony offense had decayed in accordance with section II.B.1.d.

II.D.204. A special sentencing provision was established by the legislature under M.S. 609.1352 that is available to judges when sentencing certain sex offenders. The use of this sentencing provision would constitute a departure under the sentencing guidelines and a judge must provide written reasons which specify the substantial and compelling nature of the circumstances.

### Adopted Modifications to Section II. E. Mandatory Sentences

When an offender has been sentenced according to 609.196, Mandatory Penalty for Certain Murderers, or has been sentenced according to 609.346, subd. 2a, which provides for a mandatory sentence of 37 years for certain sex offenders; the statutory provision determines the presumptive sentence.

### Adopted Modifications to Comment II. E. Mandatory Sentences

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

II.E.01. II.E.02. The Commission attempted to draw . . .

II.E.02. II.E.03. In 1981 the mandatory minimum . . .

II.E.03. II.E.04. In State v. Feinstein . . .

### Adopted Modifications to Comment II. F. 03

If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase "completion of any incarceration arising from the prior sentence" means the target release date which the Commission of Corrections assigned to the inmate for the offense committed on or before April 30, 1980 or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole connected with the preguidelines offense.

**Adopted Modifications to Section II. G. Convictions for Attempts or Conspiracies**

**Conspiracy/Attempted Murder, 1st Degree**

(The Figures "0" through "6" represent the criminal history score)

<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
<del>130</del> <del>127-133</del>	<del>142</del> <del>138-146</del>	<del>154</del> <del>149-159</del>	<del>166</del> <del>161-171</del>	<del>178</del> <del>173-183</del>	<del>190</del> <del>185-195</del>	<del>202</del> <del>196-208</del>
<u>180</u> <u>176-184</u>	<u>190</u> <u>186-194</u>	<u>200</u> <u>196-204</u>	<u>210</u> <u>206-214</u>	<u>220</u> <u>216-224</u>	<u>230</u> <u>226-234</u>	<u>240</u> <u>236-240</u>

**Adopted Modifications to Comment III. A. 202 (Establishing Conditions of Stayed Sentences):**

III.A.202. While the Commission has resolved not to develop guidelines for nonimprisonment sanctions at this time, the Commission believes it is important for the sentencing judge to consider proportionality when pronouncing a period of local confinement as a condition of probation. This is particularly important given Minn. Stat. § 609.135, subd. 7, which states that an offender may not demand execution of sentence. The period of local confinement should be proportional to the severity of the conviction offense and the prior criminal history score of the offender. Therefore, the period of local confinement should not exceed the term of imprisonment that would be served if the offender were to have received an executed prison sentence according to the presumptive guidelines duration.

**Adopted Modifications to Section V. Offense Severity Reference Table are as follows:**  
(Corrected 9/18/89)

**VIII Controlled Substance Crime In the First Degree - 152.021**

- VII**
- Controlled Substance Crime In the Second Degree - 152.022
  - Controlled Substance Crime in the Third Degree - 152.023, subd. 2(1) & (2)
  - Sale of Cocaine - 152.15, subd. 1(1) (i), (ii), (v), & (vi)
  - Sale of Hallucinogens or PCP - 152.15, subd. 1(1) (iii), (v), & (vi)
  - Sale of Heroin - 152.15, subd. 1(1) (iii), (v), & (vi)
  - Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(1) (iv), (v), & (vi)

- VI**
- Bringing Stolen Goods into State (over \$2,500) - 609.525
  - Controlled Substance Crime in the Third Degree - 152.023, subd. 1 & 2(3), (4), & (5)
  - Criminal Vehicular Operation - 609.21, subd. 1 & 3
  - Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.53, subd. 1(a)
  - Precious Metal Dealers, Receiving Stolen Goods (all values) - 609.53, subd. 3(a)
  - Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.526, (1)
  - Precious Metal Dealers, Receiving Stolen Goods (over \$300) - 609.526, second or subsequent violations
  - Receiving Stolen Goods (over \$2,500) - 609.525; 609.53
  - Sale of Cocaine - 152.15, subd. 1(2)
  - Sale of Hallucinogens or PCP - 152.15, subd. 1(3)(ii)
  - Sale of Heroin - 152.15, subd. 1(2)
  - Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(2)

- V**
- Bringing Stolen Goods into State (\$1,000 - \$2,500) - 609.525
  - Criminal Vehicular Operation - 609.21, subd. 1 & 3 2 & 4
  - Receiving Stolen Goods (\$1,000 - \$2,500) - 609.525; 609.53

- IV**
- Bringing Stolen Goods into State (\$301 - \$999) - 609.525
  - Controlled Substance Crime in the Fourth Degree - 152.024
  - Negligent Fires - 609.576, subd. 1 (a)
  - Precious Metal Dealers, Receiving Stolen Goods (\$150 - \$2,500) - 609.53, subd. 1(a)
  - Precious Metal Dealers, Receiving Stolen Goods (over \$2,500) - 609.53, subd. 2(a)
  - Precious Metal Dealers, Receiving Stolen Goods (\$300 - \$2,500) - 609.526 (1) & (2)
  - Receiving Stolen Goods (\$301 - \$999) Over \$2,500 - 609.525; 609.53
  - Receiving Stolen Property (firearm) - 609.53, subd. 1(4)
  - Sale of Remaining Schedule I, II, & III Non-Narcotics - 152.15, subd. 1(3) (i)
  - Theft of Motor Vehicle - 609.52, subd. 3(4)(f) (3) (d) (vi)

- ~~Criminal Vehicular Operation - 609.21, subd. 2 & 4~~  
~~Depriving Another of Custodial or Parental Rights - 609.26, subd. 6(2)~~  
~~Dangerous Smoking - 609.576, subd. 2~~  
~~Dangerous Trespass, Railroad Tracks - 609.60; 609.85(1)~~  
~~False Traffic Signal - 609.851, subd. 2~~  
~~Intentional Release of Harmful Substance - 624.732, subd. 2~~  
~~Motor Vehicle Use Without Consent - 609.52, subd. 2 (17)~~  
~~Obstructing Legal Process, Arrest, or Firefighting - 609.50, subd. 2~~  
~~Possession of Cocaine - 152.15, subd. 2(1)~~  
~~Possession of Hallucinogens or PCP - 152.15, subd. 2(2)~~  
 III ~~Possession of Heroin - 152.15, subd. 2(1)~~  
~~Possession of Remaining Schedule I & II Narcotics - 152.15, subd. 2(1)~~  
~~Precious Metal Dealers, Receiving Stolen Goods (less than \$150) - 609.53, subd. 1(a)~~  
~~Precious Metal Dealers, Receiving Stolen Goods (\$150 - \$2,500) - 609.53, subd. 2(a)~~  
~~Receiving Stolen Goods (\$2,500 or less) - 609.53~~  
~~Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(3)(i)~~  
~~Sale of Remaining Schedule I, II, & III Non-Narcotics - 152.15, subd. 1(3)(ii)~~  
~~Sale of a Schedule IV Substance - 152.15, subd. 1(4)(i)~~  
~~Theft of a Firearm - 609.52, subd. 3(4)(e) (3) (d) (v)~~  
~~Unauthorized Presence at Camp Ripley - 609.396, subd. 2~~
- II ~~Controlled Substance Crime in the Fifth Degree - 152.025~~  
~~Negligent Fires (damage greater than \$10,000) - 609.576, subd. 1 (b)(3)~~  
~~Precious Metal Dealers, Receiving Stolen Goods (less than \$150) - 609.53, subd. 2(a)~~  
~~Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(3)(ii)~~  
~~Sale of a Schedule IV Substance - 152.15, subd. 1(4) (iii)~~
- I ~~Assault 4 - 609.2231, subd. 1~~  
~~Assaults Motivated by Bias - 609.2231, subd. 4 (b)~~  
~~Criminal Damage to Property Motivated by Bias - 609.595, subd. 1a, (a)~~  
~~Depriving Another of Custodial or Parental Rights - 609.26, subd. 6 (1)~~  
~~Fraudulent Procurement of a Controlled Substance - 152.15, subd. 3~~  
~~Possession of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 2(2)~~  
~~Possession of Remaining Schedule I, II, & III Non-Narcotics - 152.15, subd. 2(2)~~  
~~Possession of Schedule IV Substance - 152.15, subd. 2(3)~~  
~~Sale of Schedule V Substance - 152.15, subd. 1(5)(i)~~  
~~Sale of Simulated Controlled Substance - 152.097; 152.15, subd. 2b~~  
~~Selling Unlawful Acts Involving Liquor that Causes Injury - 340A.701~~  
~~Unauthorized Use of a Motor Vehicle - 609.55~~



Misdemeanor and Gross Misdemeanor Offense List

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

Arson 3rd Degree  
609.563; subd. 2

Assault  
609.224

Burglary 4th Degree  
609.582

Carrying Pistol  
624.714

Check Forgery  
609.631

Contributing to Delinquency of Minor  
260.315

Criminal Sexual Conduct 5th Degree  
609.3451

Damage to Property  
609.595

Dangerous Weapons  
609.66

Fleeing a Police Officer  
609.487

Furnishing Liquor to Persons Under 21  
340A.503

Indecent Exposure  
617.23

Interference with Privacy  
609.746

Possession of Small Amount of Marijuana in Motor Vehicle  
152.15

Possession of Stolen Property  
609.53

Theft  
609.52, subd. 2(1)

Trespass (gross misdemeanor)  
609.605

Violating an Order for Protection  
518B.01: subd. 14

# Adopted Modifications to Section IV. SENTENCING GUIDELINES GRID

## Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Sale of a Simulated Controlled Substance</i>	I	12*	12*	12*	13	15	17	19 18-20
<i>Theft Related Crimes (\$2500 or less)</i> <i>Check Forgery (\$200-\$2500)</i>	II	12*	12*	13	15	17	19	21 20-22
<i>Theft Crimes (\$2500 or less)</i>	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
<i>Nonresidential Burglary Theft Crimes (over \$2500)</i>	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Residential Burglary Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Criminal Sexual Conduct 2nd Degree (a) &amp; (b)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i>	VII	24 23-25 48 44-52	32 30-34 58 54-62	41 38-44 68 64-72	49 45-53 78 74-82	65 60-70 88 84-92	81 75-87 98 94-102	97 90-104 108 104-112
<i>Criminal Sexual Conduct, 1st Degree</i> <i>Assault, 1st Degree</i>	VIII	43 41-45 86 81-91	54 50-58 98 93-103	65 60-70 110 105-115	76 71-81 122 117-127	95 89-101 134 129-139	113 106-120 146 141-151	132 124-140 158 153-163
<i>Murder, 3rd Degree</i>	IX	105 102-108 150 144-156	119 116-122 165 159-171	127 124-130 180 174-186	149 143-155 195 189-201	176 168-184 210 204-216	205 195-215 225 219-231	230 218-242 240 234-246
<i>Murder, 2nd Degree (felony murder)</i>								
<i>Murder, 2nd Degree (with intent)</i>								
	X	216 212-220 306 299-313	236 231-241 326 319-333	256 250-262 346 339-353	276 269-283 366 359-373	296 288-304 386 379-393	316 307-325 406 399-413	336 326-346 426 419-433

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section II.E. Mandatory Sentences for policy regarding those sentences controlled by law.

At the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation.

Presumptive commitment to state imprisonment.

\* one year and one day



## MINNESOTA SENTENCING GUIDELINES COMMISSIONS

### Summary of Modifications to the Commentary

Adopted October and November 1989

The Minnesota Sentencing Guidelines Commission adopted several changes to the commentary of the guidelines that are effective immediately. These changes are intended to clarify the Commission's intent with regard to several of the extensive modifications that went into effect August 1, 1989. These changes in commentary will hopefully reduce some of the confusion, particularly regarding the application of the weighting scheme and the change to the juvenile point. These changes to commentary do not create new policy or amend existing policy but simply clarify the intent of the Commission on existing policy.

### **The Following Commentary Change was Adopted October 19, 1989**

- 1) With the restructuring of the controlled substance crimes, Section II. C. 07. of the commentary did not properly reference the new drug law. The additional language below includes a reference to the new drug laws.

Section II. C. 07. the following was added to the end of the section:

or Minn Stat. § 152.01, subd. 15a which reads " 'Sell' means to sell, give away, barter, deliver, exchange, distribute or dispose of to another; or to offer or agree to do the same; or to manufacture", if the offense was committed after August 1, 1989.

### **The Following Commentary Changes were Adopted November 16, 1989**

- 1) Commentary language was added to clarify the Commission's intent that convictions for the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value and to address the confusion surrounding the ranking of motor vehicle offenses in general.

II.A.07. There are two theft offenses involving a motor vehicle that are ranked individually on the Offense Severity Reference Table. For Theft of a Motor Vehicle, ranked at severity level IV, the offender must be convicted under the general theft statute, Minn. Stat. § 609.52, subd., 2 (1), in order for severity level IV to be the appropriate severity level ranking. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Min. Stat. § 609.52, subd. 2 (17), the appropriate severity level is III, regardless of whether the sentencing provision that is cited is Minn. Stat. § 609.52, subd. 3 (3) (d) (vi).

- 2) Commentary language was added to clarify the Commission's policy with regard to determining the weight to be assigned to repealed offenses where the elements of the offense have been moved to a new statutory cite or an offense that has been redefined by the legislature.

II.B.101. ...The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity level III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III. Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, the controlled substance involved in the conviction. The amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determines the severity level ranking is unavailable, the lowest possible severity level should be used. It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded prior felony sentences.

- 3) A change in the commentary, II. B. 406. was made to clarify that the new additional juvenile point cannot be counted unless both the findings for the serious violent offense and at least one other juvenile offense occurred after August 1, 1989.

II.B.406. Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of two. To receive a juvenile history score of two, findings for the serious violent offense (listed in section 4.e.) and at least one other offense must have been made after August 1, 1989. The Commission was concerned with the disparities in the procedures used in the various juvenile courts. This effective date gives proper notice that in the future, the juvenile history can result in two criminal history points if at least one of the offenses is an offense listed in section 4.e.



