MINNESOTA SENTENCING GUIDELINES 101

STANDING AGAINST CHILD ABUSE CONFERENCE

JEFF EDBLAD & PETE ORPUP

JULY 23, 2018
11 Commission Members

- 3 Judges (District Court, Court of Appeals, and Supreme Court)
- Prosecutor
- Public Defense
- Law Enforcement
- Probation
- Commissioner of Corrections
- 3 Citizens (including at least one crime victim)

Staff - 6 Employees

- Director
- 4 Research Staff
- 1 Administrative Staff
What are the sentencing guidelines

- A rational structure promoting uniform and proportional sentencing, helping to ensure sentencing decisions are not influenced by factors such as race, gender, or the exercise of constitutional rights;
- A standard to measure how well the system is working by comparing typical vs. departure cases;
- A neutral sentencing structure (the system is balanced between prosecution and defense);
- A determinate sentencing system.

Notes:
The Minnesota Sentencing Guidelines Commission (MSGC) was created by the Legislature in 1978 to develop a model for rational and consistent sentencing standards for felony offenders. The Guidelines became effective for offenses committed on or after May 1, 1980. The Commission consists of 11 members from the criminal justice system, the public, and crime victims. The Commission has two basic responsibilities:

- Maintain the Guidelines Structure: annually modifying the Guidelines in response to the legislative changes, case law, and issues raised by various interested parties;
- Collect and analyze data on actual sentencing practices as compared to the sentences recommended by the Guidelines.
Sentencing Guidelines Goals & Purposes

- Public safety – Ensure violence offenders are incarcerated.
- Uniformity – Similar care and similar history = similar sentence.
- Proportionality – Severity of offense and criminal history.
- Truth and Certainty in Sentencing – Fixed sentence is known up front; no parole.
- Coordinate Policy with Correctional Resources – Predictability in prison population.
- Neutrality – Sentencing should be neutral with respect to race, gender, social, or economic status.

Notes:
Components of the Sentencing Guidelines

- Legislative sets offense definitions and penalty ranges in statute.
- Minnesota Sentencing Guidelines recommends:
  - Prison or Probation;
  - Length of Prison Sentence;
- Recommended sentence based on:
  - Offender’s conviction offense (Severity Level I – XI, Severity Level A-H, or Severity Level D1-D9);
  - Offender’s prior applicable criminal record (Scored from 0 to 6+);
- Determinate prison sentence:
  - Serve at least 2/3 of sentence in prison (more for facility violations);
  - Serve no more than 1/3 of sentence on supervised release, with additional periods of conditional release for certain offenses;
  - No Parole Board.
Components of the Sentencing Guidelines

- Judge decides intermediate sanctions for stayed sentences:
  - Probation up to statutory maximum sentence;
  - Local jail time up to one year;
  - Financial penalties (fine, restitution, etc.);
  - Community service;
  - Treatment;
  - Other available sanctions.
- Judge may depart from recommended sentence:
  - Presumptive sentence is based on a typical offense: in order to ensure proportionality, departures are appropriate in atypical cases;
  - “Substantial and compelling reasons” are necessary to justify a departure;
  - The judge required to state the departure reasons on the record.
- Defense or prosecution may appealed pronounced sentence.
The Role of Other Actors in a Sentencing Guidelines System

- Prosecutors make the initial charging decision, which initially establishes the severity level of the offense.
- Probation officers conduct a presentence investigation (PSI) and make recommendations to the judge regarding whether the presumptive sentence or a departure may be appropriate.
- Prosecutors and defense attorneys arrive at agreements regarding acceptable sentences for which an appeal will not be pursued. This may involve the defendant agreeing to a plea to a lesser charge, which will in turn result in a lesser severity level.
- Victims are provided an opportunity to comment regarding the appropriate sentence.
“Conviction” means any of the following accepted and recorded by the court:

(1) a plea of guilty; or
(2) a verdict of guilty by a jury or a finding of guilty by the court.

Notes:
But whether conviction actually occurred is not always straightforward.

- State v. Thompson, 754 N.W.2d 352 (Minn. 2008) (the court stated that it accepted the plea and would adjudicate but reserved its decision regarding the appropriateness of the plea agreement pending completion of the PSI).

- State v. Jeffries, 787 N.W.2d 654 (Minn. Ct. App. 2010) (judge accepted plea and stated “you’re convicted of that” at the plea hearing, but then rejected the pleas after seeing the PSI).

- Appellate courts will look not only at whether the court accepted the plea, or whether the defendant was “adjudicated” guilty, or whether court staff recorded the conviction.
What is Level of Sentence?

- Level of sentence = Conviction + Sentencing
  - Conviction is defined by Minn. Stat. Sect. 609.02, subd. 5 as acceptance and recording of a plea or verdict of guilty.
  - Minn. Stat. Sect. 609.13 or Minn. R. Crim. P. 23.02 reduce the conviction based on the terms of the sentence.

Notes
The level of sentence is determined by the terms of the sentence.

A sentence within the statutorily defined limits for a felony, gross misdemeanor, misdemeanor, or petty misdemeanor results in that corresponding level of sentence.
Level of Sentence Basics

- **Felony Sentence Level:** More than one year, or a fine or more than $3,000, or both.
- **Gross Misdemeanor Sentence Level:** 95-365 days, or a fine of $1,001 to $3,000, or both.
- **Misdemeanor Sentence Level:** 90 days, or a fine of $301 to $1,000, or both.
- **Petty Misdemeanor Sentence Level:** A fine of up to $300

Notes:
Level of Sentence Basics

- The level of sentence is first determined by the term of imprisonment.
  - State v. Glewwe, 239 N.W.2d 479 (Minn. 1979).
- If there is no term of imprisonment, the level of sentence is then determined by the amount of the fine.
  - State v. Vahabi, 529 N.W.2d 359 (Minn. 1995).

Notes:
There is no level of sentence when following dispositions are entered:

- Diversion
- Continued for Dismissal
- Stay of Adjudication
- Statutory Stay of Adjudication
  - Applies to stays of adjudication under Minn. Stat. Sect. 152.18 and 609.3751.
Sentence Below the Offense Level

- By operation of Minn. Stat. Sect. 609.13 or Minn. R. Crim. P. 23.02, the defendant’s conviction is deemed to be at a level consistent with the terms of the sentence.
- A sentence within the statutorily defined limits for a felony, gross misdemeanor, misdemeanor, or petty misdemeanor results in that corresponding level of sentence.

Notes:
Stay of Execution

- When the court stays execution, the court accepts a finding or plea of guilty and pronounces sentence, but stays its execution.
- The level of sentence is determined by the terms of the pronounced sentence.

Notes:
Stay of Imposition

• When the Court stays imposition, the court accepts a finding or a plea of guilty but does not pronounce sentence.
• The level of sentence is initially equal to the offense level at the time of the finding or plea of guilty.

Notes:
Stay of Imposition

- The sentence level will be reduced on the court’s MNCIS record if the court receives and enters discharge papers from probation.
- The level of the charge should never be changed in an attempt to correct the conviction level.
Length of Stay

- When the court stays imposition or execution, the length of stay does not determine the level of sentence.
- The statute specifies a maximum, but not a minimum, length of stay, which makes it impossible to discern the intended level of sentence for those ranges in which the maximum lengths overlap.
The horizontal axis represents the offender’s total criminal history score.

The vertical axis represents the severity of the level of the current offense. Felonies are currently ranked from 1-11. The offenses listed on the grid are examples of common offenses at that severity level.

Each individual cell on the grid contains the presumptive duration of a sentence in months. For cells above the disposition line, a range is also given. It is important to use the grid in effect when the current offense is committed so that the correct range is used.

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. dollar amounts within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

<table>
<thead>
<tr>
<th>SEVERITY LEVEL OF CONVICTION OFFENSE (Exempt offenses listed in italics)</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months, 2nd Degree</td>
<td>---</td>
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<td>---</td>
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<tr>
<td>Murder, 2nd Degree</td>
<td>30-90</td>
<td>120-360</td>
<td>240-720</td>
<td>360-1080</td>
<td>480-1440</td>
<td>600-1800</td>
<td>720-2160</td>
</tr>
<tr>
<td>Felony Dui, 1st Degree</td>
<td>60-180</td>
<td>300-900</td>
<td>600-1800</td>
<td>900-2700</td>
<td>1200-3600</td>
<td>1500-4500</td>
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<tr>
<td>Felony Dui, 2nd Degree</td>
<td>30-90</td>
<td>180-540</td>
<td>360-1080</td>
<td>540-1620</td>
<td>720-2160</td>
<td>900-2700</td>
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<tr>
<td>Felony Dui, 3rd Degree</td>
<td>15-45</td>
<td>90-270</td>
<td>180-540</td>
<td>270-810</td>
<td>360-1080</td>
<td>450-1350</td>
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<td></td>
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<tr>
<td>Felony Dui, 4th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
<td></td>
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<tr>
<td>Felony Dui, 5th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 6th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 7th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 8th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 9th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 10th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
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<tr>
<td>Felony Dui, 11th Degree</td>
<td>7-21</td>
<td>42-126</td>
<td>84-252</td>
<td>126-378</td>
<td>168-524</td>
<td>210-630</td>
<td></td>
</tr>
</tbody>
</table>

 jail sentence

Presumptive commitment to state imprisonment. 1st degree murder has a mandatory life sentence and is excluded from the grid. 2nd degree murder is excluded under Minn. Stat. § 617.485. See section 153 for offenses regarding these sentences are not available for use.

Presumptive sentence is the discretion of the court, up to one year of confinement and other non jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded areas of the grid always carry a presumptive commitment to state prison. See sections 22 and 23.

4. You may use, for Federal Purposes of Violation of a Probation, with the standard range of 20% higher than the Federal sentence. The range is 90-180 months. (See section 60-180 months.)
In 2006, a separate “Sex Offender Grid” was created with severity levels from A (most serious) to H.

Like the original grid, shaded areas indicate a presumptive stay and white areas indicate a presumptive prison sentence.

Note that the entire line at severity level H indicates a presumptive prison sentence. This is because failure to register as a sex offender, which carries a mandatory prison sentence, is the only offense ranked at this severity level.

### Sex Offender Grid

**Presumptive sentence lengths are in months, italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.**

<table>
<thead>
<tr>
<th>CRIMINAL HISTORY SCORE</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6 or More</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CSC 1st Degree</strong></td>
<td>A</td>
<td>144-168</td>
<td>154-174</td>
<td>168-200</td>
<td>180-220</td>
<td>234-290</td>
<td>306-350</td>
</tr>
<tr>
<td><strong>CSC 2nd Degree</strong></td>
<td>B</td>
<td>90-120</td>
<td>100-140</td>
<td>130-170</td>
<td>140-210</td>
<td>170-240</td>
<td>210-300</td>
</tr>
<tr>
<td><strong>CSC 3rd Degree</strong></td>
<td>C</td>
<td>50-54</td>
<td>62-72</td>
<td>75-87</td>
<td>90-105</td>
<td>117-128</td>
<td>128-138</td>
</tr>
<tr>
<td><strong>CSC 4th Degree</strong></td>
<td>D</td>
<td>40-56</td>
<td>51-71</td>
<td>60-91</td>
<td>81-110</td>
<td>99-140</td>
<td>110-168</td>
</tr>
<tr>
<td><strong>CSC 5th Degree</strong></td>
<td>E</td>
<td>35-60</td>
<td>40-90</td>
<td>55-110</td>
<td>80-149</td>
<td>110-200</td>
<td>140-260</td>
</tr>
<tr>
<td><strong>CSC 6th Degree</strong></td>
<td>F</td>
<td>30-56</td>
<td>35-90</td>
<td>50-110</td>
<td>70-140</td>
<td>90-210</td>
<td>140-260</td>
</tr>
<tr>
<td><strong>CSC 7th Degree</strong></td>
<td>G</td>
<td>24-46</td>
<td>30-86</td>
<td>45-110</td>
<td>60-140</td>
<td>80-210</td>
<td>120-260</td>
</tr>
</tbody>
</table>

**Registration Of Pretrial Offenders**

| N | 12-24 | 14-28 | 16-36 | 18-39 | 24-48 | 30-60 | 46-48 |

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1. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

2. The California grid grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

3. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

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5. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

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10. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

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13. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

14. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

15. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

16. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.

17. Offenders sentenced to probation are subject to a minimum sentence range of 18 months to life. This grid was prepared for use in the State of California. The California legislative body has passed several laws that have affected the grid, see sections 2-3, for changes affecting more recent legislation.
In 2016, a separate “Drug Offender Grid” was created with severity levels from D9 (most serious) to D1.

Like the other two grids, shaded areas indicate a presumptive stay and white areas indicate a presumptive prison sentence.
Nearly all felony offenses are ranked. Severity levels are found in the “Numerical Reference of Felony Statutes” section in the back of the Guidelines.

- 1 thru 10 if committed on or before 7/31/2006;
- 1 thru 11 if committed between 8/1/2002 and 7/31/2006;
- For specific sex offenses committed on or after 8/1/2006 the severity level will be A thru H;
- For controlled substance offenses committed on or after 8/1/2016 the severity level will be D1-D9.
- If an offense is unranked, the sentencing judge will rank it.
Criminal History Index

The criminal history index is comprised of 4 items:
1) Prior felony record;
2) Custody status at the time of the offense;
3) Prior misdemeanor and gross misdemeanor record
4) Prior juvenile record for young adult felons
Identifying the Presumptive Sentence

- The cell in which the offender’s severity level and criminal history score intersect will be the presumptive sentence.
- If the cell is in the shaded area, the presumed disposition is a stayed sentence, unless the conviction offense carries a mandatory minimum sentence.
- If the cell is in the non-shaded area, the presumed disposition is a commit, and the court is afforded a range to pronounce as the sentence.
Determining the Presumptive Disposition/Duration

Factors to always consider when completing a sentence worksheet

Presumptive Disposition:

1. Is cell located above or below the solid line running through grid?
2. Are there any mandatory provisions?
3. Are there any prior offenses applicable to the current offense (e.g., second or subsequent)?

Presumptive Duration:

1. As a felony the duration is never less than 1 year + 1 day.
2. Use the grid time or the mandatory (statutory) minimum, whichever is greater.
3. With a criminal history score of 7 or greater which includes a custody status point, 3 months are added to the grid time.
4. Attempts and Conspiracies are generally half the grid time.
By statute, a pronounced sentence is composed of two parts:

- **Terms of Imprisonment**: A specified term to be served in prison of not less than 2/3 of the total executed sentence;
- **Supervised Release**: A specified term of not more than 1/3 of the total executed sentence served outside of the facility and supervised by corrections agents.

Minn. Stat. Sect. 244.101

**Example**: Executed Sentence of 60 months

<table>
<thead>
<tr>
<th>Term of Imprisonment</th>
<th>Supervised Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least 2/3 = 40 months</td>
<td>No more than 1/3 = 20 months</td>
</tr>
</tbody>
</table>
Conditional Release

- An additional term of supervision applied to specific offenses when the sentence is executed.
- Conditional release terms run 5 years, 10 years, or life depending on the offense and when it was committed.
- Conditional release term runs concurrent to supervised release term. The status changes over to conditional release when supervised release is completed.

Example: **Full Sentence = 60 months + 60 months Conditional Release**

<table>
<thead>
<tr>
<th>Term of Imprisonment</th>
<th>Supervised Release</th>
<th>Conditional Release =</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least $2/3 = 40$ months</td>
<td>No more than $1/3 = 20$ months</td>
<td>remaining $40$ months</td>
</tr>
</tbody>
</table>

20 months

Conditional Release time

starts here
The date of offense is important because the guidelines and statutes that are in effect when the current offense is committed are used to determine all sentencing aspects of the offense.

The date of offense will determine:

- The severity level to be applied;
- Which policies will govern the criminal history calculation;
- Which policies and statutes will apply to determining the presumptive sentence and any mandatory minimums; and
- The order of sentencing for multiple convictions.
If the complaint is written to reflect multiple offenses aggregated into a single offense, unless the fact-finder determines a specific date be used, the earliest date of the offense should be used.

Example:
- An offender commits multiple theft by check offenses over a 6-month period, from June of 2009 thru November 2009.
- The offender is found guilty of a single offense under Minn. Stat. Sect. 609.52.2(3) and Sect. 609.52.3(5).
- The date of offense would be 6/1/2009, since this is the earliest date of the date range.
- The guidelines used would be the policies that went into effect 8/1/2008.
Date of Offense - Multiple Offenses as Elements of a Single Conviction

- If multiple offenses are an element of the conviction offense, such as in Minn. Stat. Sect. 609.342, Subd. 1(h)(iii), the date of the conviction offense must be determined by the fact finder. If it is not, the earliest date should be used. See State v. DeRosier, 719 N.W.2d 900 (Minn. 2006).

- Example:
  - An offender has committed multiple CSC1 offense over an extended period, ranging from June of 2000 thru November of 2007.
  - The offender is found guilty of a single offense under Minn. Stat. Sect. 609.342.1(h)(iii).
  - Unless the fact finder determines otherwise, the date of offense used for determining the presumptive sentence would be 6/1/2000.
  - The guidelines used would be the policies that went into effect 8/1/1999.
Application to Juveniles

- The Sentencing Guidelines Apply to:
  - Stayed adult sentence for EJJ offenders.
  - Felony sentence for juveniles certified as adults.
Felony History

- Count prior felony history for prior sentences for:
  - Extended Jurisdiction Juvenile convictions;
  - Adult offenses sentences (i.e., not just a conviction);
  - Adult offenses receiving a stay of imposition;
  - Foreign/Out-of-State offenses which are felonies under current MN law and received felony sentences;
  - Federal offenses with no Minnesota equivalent.
- Count only prior felony history that has not decayed.
- Weights are assigned based on the current severity level of the prior offense:
  - Severity Level I-II = 1/2 point;
  - Severity Level III-V = 1 point
  - Severity Level VI-VIII = 1 1/2 points
  - Severity Level IX-XI = 2 points; and
  - First Degree Murder = 2 points.
Custody Status Point

• Probation
• Parole/Supervised Release
• Confined
• Release Pending Sentence
• Escape
• Within Original Probation Term (effective 8/1/2001)
• Extended Juvenile Jurisdiction

Please Note: A custody status point will not result from any prior juvenile or misdemeanor offense.
Misdemeanor/Gross Misdemeanor History

- Only adult convictions count toward misdemeanor/gross misdemeanor criminal history; prior juvenile adjudications for misdemeanor or gross misdemeanor offenses are never used.
- Include a prior misdemeanor or gross misdemeanor offense if:
  - The offense is on the Misdemeanor and Gross Misdemeanor Offense List at the time the current offense was committed;
  - The offense was a felony level conviction that resulted in a misdemeanor or gross misdemeanor sentence;
  - The offense has not decayed.
- Misdemeanor and gross misdemeanor offenses each count as 1 unit; 4 units are required for 1 criminal history point.
- Only 1 misdemeanor/gross misdemeanor point generally may be given.
Assigning the First Juvenile Point:

- Prior juvenile offenses must have been felonies.
- Offender must have been less than 25 years old at the time of the current offense.
- Prior juvenile offenses must have occurred after the offender’s 14th birthday.
- Prior findings must have been made by the juvenile court.
- Two juvenile findings are required for one criminal point.
SPECIAL  TOPICS
Types of Departures

Dispositional

- A disposition is the decision to send an offender to state prison or to place the offender on probation.
  - Aggravated (Upward) dispositional departure: The guidelines recommend a stayed (probation) sentence and the judge sentences that offender to prison.
  - Mitigated (downward) dispositional departure: The guidelines recommend prison and the judge stays the sentence.
Types of Departures

**Durational**

- The duration refers to the length of the sentence. The guidelines recommend a range of months the typical offender should receive.

- **Aggravated durational departure:** The judge pronounces a prison sentence that is greater than the upper end of the range.

- **Mitigated durational departure:** The judge pronounces a sentence less than the lower end of the range.
Mandatory Minimum Sentence
Mandatory Minimum Sentence

● When an offender has been convicted of an offense which carries a mandatory minimum sentence of at least 12 months/1 day, the presumptive disposition will be a commit.

● The presumptive duration will either be the mandatory minimum from statute or the Grid duration – based on the Severity Level and criminal history score – whichever is longer.

● When the presumptive sentence, based on the Severity Level and criminal history score, is longer than the mandatory minimum make certain that the lower and upper ends of the range are not below the mandatory minimum.
  ● When the mandatory minimum is the presumptive sentence, that will also be lower and upper duration of the range.

● If there is a sentence-reducing modifier, then the sentence – which includes the lower and upper end of the range – cannot go below the mandatory minimum duration.
Assault against a Peace Officer under Minn. Stat. Sec. 609.221, Subd. 2 carries a 10-year mandatory minimum. All convictions under this statute have a presumptive sentence of 120 months or the grid time, whichever is greater. Because this is a Severity Level 9 offense, the Grid exceeds the mandatory minimum at a criminal history of 2. Note that the 120-month mandatory minimum also applies to attempts.
If an offender is confined serving an executed prison sentence at the time of an assault or escape, the presumptive disposition is always commitment. Assault against personnel at a secure treatment facility while committed for treatment will always have a presumptive disposition of commitment.

The duration of the sentence will be found in the appropriate cell of the applicable grid. These offenses qualify for presumptive consecutive sentencing.
Several offenses carry a mandatory minimum sentence if the conviction is considered a subsequent (or repeat) offense. Often times, the Guidelines have taken these mandatory minimums into account, and the Grid time exceeds the duration of the mandatory minimum sentence. However, several of the following offenses have mandatory sentences that may exceed the Grid time. The presumptive sentence is always the longer of the two durations. The disposition for each of the following subsequent offenses is commitment, regardless of the offender’s criminal history score.
Subsequent Offenses

- First-Degree Burglary of an Occupied Dwelling with a Prior Felony Burglary
  - Commit for Grid Time
- Subsequent Third-Degree Controlled Substance Offenses
  - 24 Months or Grid Time, whichever is longer
- Subsequent Predatory Offender Failure to Register Offenses
  - 24 Month Commit
- Felony DWI with Prior Felony DWI or Prior Felony CVO
  - 26 Month Commit
Mandatory Minimum Weapon Offenses (Minn. Stat. Sect. 609.11)

- The presumptive disposition is imprisonment.
- The presumptive duration is the mandatory minimum or grid time, whichever is greater.
- Offenses covered are found in 609.11, Subd. 9.
- Use or possession of a weapon must be a finding of fact in the court record.
- Sentencing without regard to 609.11 constitutes a departure from the guidelines.
# Mandatory Minimums: Weapon Offenses

<table>
<thead>
<tr>
<th>Weapon Type</th>
<th>First or Subsequent</th>
<th>Mandatory Minimum Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commit listed offense with dangerous weapon (not a firearm); Minn. Stat. Sect. 609.11, Subd. 4</td>
<td>1st Offense</td>
<td>Commit for 1 year and 1 day</td>
</tr>
<tr>
<td>Commit listed offense with Dangerous Weapon (not a firearm); Minn. Stat. Sect. 609.11, Subd. 4</td>
<td>Subsequent offense - prior weapon offense</td>
<td>Commit for 36 months</td>
</tr>
<tr>
<td>Commit listed offense with firearm, Minn. Stat. Sect. 609.11, Subd. 5(a)</td>
<td>1st offense</td>
<td>Commit for 36 months</td>
</tr>
<tr>
<td>Commit listed offense with firearm, Minn. Stat. Sect. 609.11, Subd. 5(a)</td>
<td>Subsequent offense - prior firearm offense</td>
<td>Commit for 60 months</td>
</tr>
<tr>
<td>Felon in Possession, Minn. Stat. Sect. 624.713, Subd. 1(2) and 2(b) with</td>
<td>1st and subsequent</td>
<td>Commit for 60 months</td>
</tr>
</tbody>
</table>
Most Common Weapon Offenses

The most common weapon offenses are found at Severity Level 6:

- **Assault 2nd Degree**, Minn. Stat. Sect. 609.222
- **Felon in Possession of a Firearm**, Minn. Stat. Sect. 624.713

Even if the criminal history score shows a sentence in the shaded area, the disposition is a mandatory commit and the duration will be the mandatory minimum or the Grid time, whichever is longer.
Permissive Consecutive Sentences

- Generally when an offender receives multiple sentences the durations will run concurrently.
- There are situations where a court may sentence consecutively.
- Two or more sentences run consecutively rather than concurrently without a departure.
In order for two offenses to be sentenced consecutively they must both have presumptive Dispositions of Commitment.

Found in Section 6 of the Guidelines.
Permissive Consecutive Sentencing List – Why the List Went into Effect

---------------------------------- BLAKELY V. WASHINGTON ------------------------------------------

Before Blakely

- The court was not required to make any additional findings to impose consecutive sentences other than that there were multiple current convictions for a “person offense” or a prior conviction of a “person offense.”
- There was no statutory definition of a “person offense.”
- The court determined whether an offense was classified as a person offense.

After Blakely

- Because the term “person offense” had varying meanings in various situations, all felony offenses were reviewed and classified as eligible or ineligible for permissive consecutive sentencing.
- Inclusion on the list was based on the potential level and type of injury to victims, and previous patterns of consecutive sentencing use.
- The designation of eligible/ineligible for consecutive sentencing removes the need for the court to make that finding and adequately addresses any potential Blakely issues.
Permissive Consecutive Sentencing List – What Offenses are Included

- Abuse/Deprivation of Vulnerable Adult
- Accidents (death or great bodily harm)
- Arson 1st Degree
- Assaults, DA, DA by Strangulation, Terr. Threats
- Burglary 1st Degree & 2nd Degree (if bank/dwelling)
- Abuse/Deprivation of Vulnerable Adult
- Child Neglect/Endangerment/Malicious Punishment
- Crime Committed for Benefit of Gang
- Criminal Sexual Conduct/Incest/Child Pornography
- Drive-by Shooting
- Drug Offenses (involving a minor)
- DWI/CVH/CVI
- Emergency Tel. Calls/Interfere Transit Operator
- Tampering with Witness
- Escape with Violence
- Fleeing Peace Officer
- Identity Theft
- Indecent Exposure
- Kidnapping/False Imprisonment
- Escape with Violence
- Labor Trafficking
- Manufacture Meth
- Murder/Manslaughter
- Prostitution/Solicitation/Use of Sex with Minor
- Registration of Predatory Offenders
- Robbery
- Sex Trafficking
- Violate OFP/HRO/DANCO, Stalking
Modifiers indicate the anticipatory nature of the crime or the degree to which an offender aided or abetted another in its commission. They:

1. Help define the offense.
   - Example – The attempt statute Minn. Stat. Sect. 609.17, Subd. 1, states: “Crime defined. Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime, and may be punished as provided in subdivision 4.)

2. Affect the duration of the sentence.
   * Example – The attempt statute Minn. Stat. Sect. 609.17, Subd. 4, states: “Penalties ... to not more than one-half of the maximum imprisonment or fine or both provided for the crime attempted.”
Some modifiers reduce the sentence. When this is the case, the Guidelines provide that the duration should not be calculated to less than 1 year and 1 day, or to less than any applicable mandatory minimum. This calculation also applies to the range contained within the grid.

MOST COMMON:

- Attempt – Minn. Stat. Sect. 609.17
- Conspiracy – Minn. Stat. Sect. 609.175
- Solicitation of Juveniles – Minn. Stat. Sect. 609.494, Subd. 2(b)
Offense Modifiers

- If the modifier will increase the sentence, the duration will not be calculated to greater than the statutory maximum. The duration increase also applies to the ranges contained within the grid.
Conspiracy to Commit a Controlled Substance per Minn. Stat. Sect. 152.096 is not a separate controlled substance offense; rather it is a modifier.

It is important to differentiate between this conspiracy and that under Minn. Stat. Sect. 609.175. This conspiracy will not affect the presumptive sentence.

To indicate this modifier in a complaint, state the specific degree of drug, including the Conspiracy modifier as part of it:

- Conspiracy to Commit Controlled Substance in the 2nd Degree – Sale of 7.5 Grams of Cocaine
- Conviction Statute – Minn. Stat. Sect. 152.022, Subd. 1(1)
- Penalty Statute – Minn. Stat. Sect. 152.022, Subd. 3(1)
- Additional Statute – Minn. Stat. Sect. 152.096, Subd. 1

The probation agent will now be able to complete the worksheet by using the conviction statute for the degree of drug to find the severity level of the offense.
The sentence pronounced by the court must always be the Grid duration after application of the modifier, or the applicable mandatory minimum after the application of the modifier, whichever is longer.

A sentence that includes a modifier should not be calculated below any applicable mandatory minimum, or above any applicable statutory maximum.

When the sentence is an odd number, division by two will produce a half month, which is the presumptive sentence.
- For example, 41 months divided by two equals 20.5 months, which will be the presumptive sentence - do not round up or down.

Any modification made to the presumptive sentence will also be made to the range on the grid.
Applying a sentence modifier

  - This is a severity level offense, and for this example, the total criminal history score for the offender is a 2.
  - The presumptive sentence reflected on the worksheet for a completed offense would be a commit for 68 months with a range of 58 to 81 months.
  - The modifier of attempt will reduce the sentence by half, making the presumptive sentence that would be pronounced without a departure a commit for 34 months, with a range of 29 to 40.5.
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