

Minnesota Sentencing Guidelines Commission

Adopted Modifications to the Sentencing Guidelines and Commentary Effective August 1, 2011

A. New and Amended Crimes Passed by the 2011 Legislature – Adopted July 28, 2011

1. New Felony Offense: Controlled Substance Analog (Minn. Stat. § 152.01)

The 2011 Legislature created criminal penalties for the sale and possession of a controlled substance analog, which is defined as a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II. Analogs are defined as Schedule I controlled substances; sale and possession of these substances can range from a controlled substance crime in the fifth-degree to a controlled substance crime in the second-degree.

The Commission adopted a proposal to maintain the severity level rankings for sale and possession of controlled substance crime in the fifth-degree (Minn. Stat. § 152.025) at severity level 2; controlled substance crime in the fourth-degree (Minn. Stat. § 152.024) at severity level 4; controlled substance crime in the third-degree (Minn. Stat. § 152.023) at severity level 6; and controlled substance crime in the second-degree (Minn. Stat. § 152.022) at severity level 8.

2. Amended Felony Offenses

The Commission considered amendments made by the 2011 Legislature to the following statutes and adopted a proposal to maintain their current severity level rankings and status on the permissive consecutive list (where applicable). In some cases, the amendments expanded definitional statements; in others, the amendments expanded the scope of the offense.

- a. Killing or harming a public safety dog (Minn. Stat. § 609.596): The felony offense of killing or harming a public safety dog (Minn. Stat. § 609.596) was amended to include “great or substantial bodily harm.” The offense is on the unranked offense list.
- b. Vulnerable Adult Abuse, Registration (Minn. Stat. § 243.166): The law governing registration of predatory offenders was amended to add criminal abuse of a vulnerable adult under Minn. Stat. § 609.2325, subd. 1(b) to the list of offenses for which registration is required. Subdivision 1(b) of this statute is limited to a caregiver who “engages in sexual contact or penetration...with a resident, patient, or client of the facility...” Failure to register as a predatory offender is ranked at severity level H on the sex offender grid and it is an eligible offense for a permissive consecutive sentence.

- c. Fleeing Police in a Motor Vehicle (Minn. Stat. § 609.487): The fleeing a peace officer statute (Minn. Stat. § 609.487, subd. 4) has been amended by expanding the definition to include whoever, in the course of fleeing in a motor vehicle “or subsequently by other means,” causes death or bodily injury to any person other than the perpetrator. Fleeing offenses are ranked at severity level 10 for fleeing resulting in death; severity level 6 for fleeing resulting in great bodily harm; and severity level 4 for fleeing resulting in substantial bodily harm. Fleeing a peace officer under Minn. Stat. § 609.487, subd. 4, is an eligible offense for a permissive consecutive sentence.
- d. Racketeering (Minn. Stat. §§ 609.902-904): Theft of moveable property (under Minn. Stat. § 609.52, subd.2(1)) has been added to the list of eligible offenses in Minn. Stat. § 609.902, for which an offender can be charged with racketeering. Racketeering is on the unranked offense list.
- e. Fourth Degree Assault, Assault of a Police Horse (Minn. Stat. § 609.597): The crime of assaulting a police horse, Minn. Stat. § 609.597, has been expanded to include police horses being utilized by reserve officers. Paragraphs (1) (death or great bodily harm to the officer) and (2) (death or great bodily harm to the horse) are unranked. Paragraph (3), which involves demonstrable bodily harm to a horse is ranked at severity level 1.

3. Gross Misdemeanors/Targeted Misdemeanors

Minn. Sentencing Guidelines § 2.B.3 provides that prior non-traffic gross misdemeanors and misdemeanors on the targeted misdemeanor list defined in Minn. Stat. § 299C.10, subd. 1(e) shall count towards an offender’s criminal history score.

The 2011 Legislature expanded the definition of “targeted misdemeanor” to include violations of domestic abuse no contact orders under Minn. Stat. § 629.75. This offense was previously included as a targeted misdemeanor, but was missed when the provisions relating to domestic abuse no contact orders were recodified by the 2010 Legislature.

The Commission adopted a proposal to remove the footnote to the Targeted Misdemeanor List as a result of the law change.

Adopted Language:

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

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

....

Offense Title	Statute Number
Order for Protection Violation*	518B.01; 629.75

....

~~* According to the MN Bureau of Criminal Apprehension, this includes violations of domestic abuse no contact orders under M.S. § 518B.01, subd. 22, which was re-codified to M.S. § 629.75, effective August 1, 2010 (2010 Minn. Session Laws, Ch. 299, section 14).~~

B. Non-Legislative Modifications – Adopted July 28, 2011

1. Targeted Misdemeanors – Custody Status Point Assigned to Targeted Misdemeanor Offenders Discharged Early From Probation

The Commission adopted a proposal to modify the sentencing guidelines to clarify that a custody status point applies to an offender who was on probation for a targeted misdemeanor offense, but was discharged early from probation.

Adopted Language (Minn. Sentencing Guidelines § 2.B.2):

2. One point is assigned if the offender:

....

- b. committed the current offense within the period of the initial probationary sentence. If an offender is given an initial term of probation that provides a range of years (e.g. “not to exceed three years,” “three to five years,” “up to the statutory maximum”), rather than a specified number of years, and commits a new crime at any time prior to the end date of the pronounced range, a custody status point will be assigned. This policy applies to a conviction in a prior felony, extended jurisdiction juvenile, non-traffic gross misdemeanor or gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence; or

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2. Targeted Misdemeanors – No Custody Status Point Assigned to Offenders Sentenced to Non-Targeted Misdemeanor Offenses

The Commission adopted a proposal to modify the sentencing guidelines commentary to clarify that a custody status point shall not apply to an offender convicted of a felony or gross misdemeanor who is given a misdemeanor sentence.

Adopted Language (Minn. Sentencing Guidelines § 2.B.2):

***II.B.203.** It should be emphasized that the custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test case or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, a person who commits a new felony while on pre-trial diversion or pre-trial release on another charge would not get a custody status point. Likewise, persons serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), would not receive a custody status point, even if the misdemeanor sentence was imposed upon conviction of a gross misdemeanor or felony.*

3. Targeted Misdemeanors – Custody Status Point Applies to Enhanced Felonies

The Commission adopted a proposal to modify the sentencing guidelines to make it clear that a custody status point shall apply to an offender on probation for a targeted misdemeanor offense at the time he or she commits an enhanced felony.

Adopted Language (Minn. Sentencing Guidelines § 2.B.6):

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, the prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e) or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score....

4. Stalking (Aggravated Violations) and Possessing a Dangerous Weapon – Mandatory Imprisonment

The Commission adopted a proposal to modify the sentencing guidelines to add stalking and possessing a dangerous weapon to a list of offenses for which the Commission determined a mandatory minimum prison sentence always applies because a dangerous weapon was involved.

Adopted Language (Minn. Sentencing Guidelines § 2.E):

***II.E.05.** There are some offenses that by statutory definition involve a dangerous weapon and, therefore, the mandatory minimum provision dealing with dangerous weapons always applies: ~~for example, Assault in the Second Degree, Certain Persons Not to Have Firearms, Drive-By Shootings, and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3) Certain Persons Not to Have Firearms.~~ The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is greater.*

C. Non-Legislative Modifications – Adopted December 10, 2009¹

1. Re-Ranking Riot First Degree

The Commission adopted a proposal to change the severity level ranking for riot first degree (resulting in death) from severity level 5 to severity level 8. This was done to bring the ranking and presumptive sentence in-line with other similar crimes.

Adopted Language (Minn. Sentencing Guidelines § 5):

5. OFFENSE SEVERITY REFERENCE TABLE

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SEVERITY LEVEL	OFFENSE	STATUTE
5	Riot 1	609.71, subd. 1
<u>8</u>	<u>Riot 1</u>	<u>609.71, subd. 1</u>

....

¹ The effective date was delayed until August 1, 2011 (2010 MN Session Laws, Ch. 215, Art. 11, Sec. 23).

2. Re-Ranking Certain Prostitution Offenses

In an effort to treat certain prostitution offenses similarly to offenses currently on the sex offender grid, the Commission adopted a proposal to change the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the first degree from a severity level 9 (on the regular grid) to a severity level B (on the sex offender grid). The Commission also adopted a proposal to change the severity level ranking for solicitation, inducement, and promotion of prostitution; sex trafficking in the second degree from a severity level 5 (on the regular grid) to a severity level C (on the sex offender grid).

Adopted Language (Minn. Sentencing Guidelines § 5):

5. OFFENSE SEVERITY REFERENCE TABLE

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SEVERITY LEVEL	OFFENSE	STATUTE
9	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree	609.322, subd. 1
<u>B</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the First Degree</u>	<u>609.322, subd. 1(a)</u>
5	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree	609.322, subd. 1a
<u>C</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking in the Second Degree</u>	<u>609.322, subd. 1a</u>

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D. Technical Modification to the Sentencing Guidelines – Adopted July 28, 2011

1. Permissive Consecutive Sentences List – Single Entry for First-Degree DWI

The Commission adopted a proposal to modify the sentencing guidelines to combine the entries for felony DWI on the list of offenses eligible to be sentenced consecutively. First-degree DWI – previous conviction for criminal vehicular homicide or injury – was added to the law in 2006, but was not added to the list of offenses eligible for permissive

consecutive sentencing. A single entry for felony First-Degree DWI will reference all paragraphs.

Adopted Language (Minn. Sentencing Guidelines § 6):

6. OFFENSES ELIGIBLE FOR PERMISSIVE CONSECUTIVE SENTENCES

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Statute Number	Offense Title
169A.24, subd. 1 (1)	First-Degree DWI— 4 or more w/in 10 years
169A.24, subd. 1 (2)	First Degree DWI— 2 nd or subsequent

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2. Conditional Release – Mandatory Terms of Release for Certain Offenders

The Commission adopted a proposal to modify the sentencing guidelines to simplify the language that relates to conditional release for certain offenders so that it merely identifies the offenses for which there is a conditional release term, and cites to the appropriate statute.

Adopted Language (Minn. Sentencing Guidelines § 2.E):

E. Mandatory Sentences:

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Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(d).
- First through fourth degree criminal sexual conduct and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. 6-8.
- Use of minors in a sexual performance. Minn. Stat. § 617.246, subd. 7.

- Possession of pornographic work involving minors. Minn. Stat. § 617.247, subd. 9.
- ~~When a court commits a person subject to one of these statutes to the custody of the Commissioner of Corrections, it shall provide that after the person has been released from prison, the Commissioner shall place the person on conditional release for the designated term.~~
- ~~A person committed to prison for a sex offense or criminal sexual predatory conduct is subject to a ten-year conditional release term, unless the offense is a violation of M.S. § 609.3451 (fifth-degree criminal sexual conduct).~~
- ~~If the person was committed to prison for a violation of M.S. §§ 609.342 (first degree criminal sexual conduct), 609.343 (second degree criminal sexual conduct), 609.344 (third degree criminal sexual conduct), 609.345 (fourth degree criminal sexual conduct), or 609.3453 (criminal sexual predatory conduct), and there is a previous or prior sex offense conviction, the person shall be placed on conditional release for the remainder of the person's life, unless the current offense and prior conviction were both for violations of M.S. § 609.345 (fourth degree criminal sexual conduct).~~
- ~~If both the current and prior convictions are for M.S. § 609.345 (fourth degree criminal sexual conduct), the conditional release period shall be for ten years.~~
- ~~If a person who is subject to a life-with-the-possibility-of-release sentence is released, that offender is subject to conditional release for the remainder of his or her life.~~
- ~~If a person is sentenced for failure to register as a predatory offender and the person was assigned a risk level III under M.S. § 244.052, the person shall be placed on conditional release for ten years.~~
- ~~A person convicted of fourth degree assault against secure treatment facility personnel under M.S. § 609.2231, subdivision 3a, use of minors in a sexual performance under M.S. § 617.246, or a child pornography offense under M.S. § 617.247, is subject to a five-year conditional release term.~~
- ~~If the person was committed to prison for a violation of M.S. §§ 617.246 (use of minors in a sexual performance) or 617.247 (possession or dissemination of child pornography), and there is a previous or prior conviction for either of these offenses or for a criminal sexual conduct offense, the person shall be placed on conditional release for ten years.~~

- ~~Finally, a person sentenced to imprisonment for first degree (felony) driving while impaired is subject to five years of conditional release.~~

3. Unofficial Mandatory Sentences Reference Table – Dangerous Weapons

The Commission adopted a proposal to correct an error related to subsequent dangerous weapons offenses on an unofficial reference table. A 36-month mandatory minimum applies if a current offense involves a dangerous weapon other than a firearm, and a prior offense involves any dangerous weapon.

Adopted Language (MANDATORY SENTENCES REFERENCE TABLE)

Dangerous Weapons – M.S. § 609.11			
Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.11, subd. 4	Dangerous Weapon (Other than firearm)	<i>Weapon is an element of crime</i>	1 year and 1 day
609.11, subd. 4	Dangerous Weapon (Other than firearm) – Subsequent offense	<i><u>Current dangerous weapon offense (other than firearm) with prior dangerous weapon offense</u> firearm offense with prior firearm or dangerous weapon offense</i> <i>Weapon is an element of crime</i>	36 months

4. Repealed Statute – Security Violations

The Commission adopted a proposal to update the entry for Security Violations in the sentencing guidelines. Security Violations under Minn. Stat. § 80A.22 was repealed in 2006 and was replaced with Minn. Stat. § 80A.68.

Adopted Language (Minn. Sentencing Guidelines § 5):

5. OFFENSE SEVERITY REFERENCE TABLE

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SEVERITY LEVEL	OFFENSE	STATUTE
4	Security Violations (over \$2,500)	80A.22, subd. 1; 80A.68; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
3	Security Violations (\$2,500, or less)	80A.22, subd. 1; 80A.68; 80B.10, subd. 1;

....

5. Reformatted Sentencing Guidelines

The Commission adopted a proposal to make formatting changes to the sentencing guidelines. These formatting changes are included in the 2011 edition of the sentencing guidelines and commentary, and are: using bullet points to make long passages of text more readable; changing roman numerals to numbers; and reformatting the offense severity reference table into a more legible, shaded table.