



Minnesota Sentencing Guidelines Commission Effective Dates for Modifications to the Sentencing Guidelines August 2003

Note: The modifications effective August 1, 2003 were inadvertently included in the *January 1, 2003 Sentencing Guidelines and Commentary*. However, they do not take effect until August 1, 2003.

❖ Effective for crimes committed on/after August 1, 2003

The Commission adopted a proposal to rank the following unranked offenses.

- VI Controlled Substance Crime in the Third Degree (~~non-aggregated offenses~~) – 152.023
- III Registration of Predatory Offenders (2nd or subsequent violation) – 243.166 subd. 5(c)
- I Registration of Predatory Offenders – 243.166 subd. 5(b)

The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences to indicate that Presumptive Consecutive Sentences apply to offenders who are on Conditional Release

Presumptive Consecutive Sentences

Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving, or on supervised release, conditional release, or on escape status from, an executed prison sentence.

The Commission adopted a proposal to add the following language to section II.F. Concurrent/Consecutive Sentences to indicate that felony assaults committed while confined in a local jail or workhouse are Permissive Consecutive

Permissive Consecutive Sentences

7. A current conviction for a felony assault committed while in a local jail or workhouse may be sentenced consecutively to any other executed prison sentence if the

presumptive disposition for the other offense was commitment to the Commissioner of Corrections. ****

The Commission adopted a proposal to modify the following language to II.B.2 to indicate that the Custody Status Point applies to offenders who escape before sentencing.

2. One point is assigned if the offender:
 - a. was on probation, parole, supervised release, conditional release, or confined in a jail, workhouse, or prison pending sentencing, following a guilty plea or verdict in a felony, gross misdemeanor, or extended jurisdiction juvenile case, or following a felony, gross misdemeanor or an extended jurisdiction juvenile conviction;

~~II.B.201. The basic rule assigns offenders one point if they were under some form of criminal justice custody following conviction of a felony or gross misdemeanor when the offense was committed for which they are now being sentenced. Criminal justice custodial status includes: 1) probation (supervised or unsupervised), parole, supervised release, conditional release, or confinement in a jail, workhouse, or prison, or work release, following a felony, gross misdemeanor, or an extended jurisdiction juvenile conviction; 2) release pending sentencing following the entry of a plea of guilty to a felony or gross misdemeanor, or a verdict of guilty by a jury or a finding of guilty by the court of a felony or gross misdemeanor; or 3) if the current offense occurred within the period of the initial length of stay pronounced by the sentencing judge for a felony, gross misdemeanor, or extended jurisdiction juvenile conviction.~~

The Commission adopted a proposal to modify the following language in II.A.02 related to determining the date of offense to make it consistent with case law.

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II.A.02.

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- b. *If multiple offenses are an element of the conviction offense, such as in subd. 1(h)(iii) of first degree criminal sexual conduct, the date of the ~~earliest offense should be used as the date of the conviction offense~~ conviction offense must be determined. If there is a reasonable likelihood that all of the offender's multiple acts occurred before a date on which the presumptive sentence changed, the earlier presumptive sentence should be used. If there is no reasonable likelihood that all of the offender's multiple acts occurred before that date, the later presumptive sentence should be used. See State v. Murray, 495 N.W.2d 412, 415 (Minn. 1993)(articulating rule).*

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The Commission adopted a proposal to assign two units each to prior Gross Misdemeanor Criminal Vehicular Injury offenses when the current offense is felony DWI or felony Criminal Vehicular Homicide or Injury.

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing....There is the following exception to this policy when the current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired: previous violations of section 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or~~ 360.0752, or 609.21 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI or Criminal Vehicular Homicide and Injury violations.

II.B.301.

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, driving while impaired traffic offenses have particular relevance to the offenses of criminal vehicular homicide or injury and first degree (felony) driving while impaired. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129 or 360.0752 shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury or first degree (felony) driving while impaired. ~~These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.~~

II.B.302.

The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury or first degree (felony) driving while impaired, and who have prior violations under 169A.20, 169A.31, 169.121, 169.1211, 169.129, ~~or~~ 360.0752, or 609.21 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI or criminal vehicular homicide and injury (CVI) violations. To determine the total number of misdemeanor points under these circumstances, first add together any non DWI/CVI misdemeanor units. If there are less than four units, add in any DWI/CVI units. Four or more units would equal one point. Only DWI/CVI units can be used in calculating additional points. Each set of four DWI/CVI units would equal an additional point. For example, if an offender had two theft units and six DWI/CVI units, the theft would be added to the two DWI/CVI units to equal one point. The remaining four DWI/CVI units would equal a second point. In a second example, if an offender had six theft units and six DWI/CVI units, the first four theft units would equal one point. Four of the DWI/CVI units would equal a second point. The remaining two theft units could not be added to the remaining two DWI/CIV units for a third point. The total misdemeanor score would be two.

❖ **Effective for crimes committed on/after August 8, 2003**

The Commission adopted a proposal to rank the following crimes in Section V. OFFENSE SEVERITY REFERENCE TABLE as follows:

Note: The following new crimes made effective by the Legislature August 1, 2003, are technically unranked until August 8, 2003.

VIII	<u>Identity Theft – 609.527, subd. 3(5)</u>
V	<u>Interference with Emergency Communications – 609.776</u>
III	<u>Attempted Manufacture of Methamphetamine – 152.021, subd. 2a(b)</u>
II	<u>Mail Theft – 609.529</u>

NUMERICAL REFERENCE OF FELONY STATUTES

STATUTE	OFFENSE	SEVERITY LEVEL
152.021, subd. 2a(b) ¹	<u>Attempted Manufacture of Methamphetamine</u>	<u>3</u>

¹ The presumptive duration for this offense is the time found in the appropriate cell on the Sentencing Grid or the mandatory minimum, whichever is longer. Durations should not be divided in half. Policies applying to Attempts under M.S. §609.17 in section II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers are not applicable.

The Commission adopted proposals to add the following crimes to the *Misdemeanor and Gross Misdemeanor Offense List*

Misdemeanor and Gross Misdemeanor Offense List

Assault in the Fourth Degree
609.2231, subd. 1, 2a, 4, 5, & 6, & 7

Registration of Predatory Offenders
243.166, subd. 5

The Commission adopted a proposal to add the following language to II.D. of the *Sentencing Guidelines and Commentary* to address the legislative directive requiring a new aggravating factor for Identity Theft:

D. Departures from the Guidelines: ****

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: ****
 - b. Aggravating Factors: ****
 - (12) The offender's use of another's identity without authorization to commit a crime. This aggravating factor may not be used when the use of another's identity is an element of the offense. ****

The Commission adopted a proposal to add the following language to II.D. of the *Sentencing Guidelines and Commentary* to address new legislation allowing alternative placement for offenders with serious and persistent mental illness as defined in M.S. §609.1055:

D. Departures from the Guidelines: ****

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: ****
 - (6) Alternative placement for offender with serious and persistent mental illness (See Minn. Stat. §609.1055). ****

The Commission adopted a proposal to add the following language to II.B.2. of the *Sentencing Guidelines and Commentary* to clarify that a Custody Status Point should not be assigned if the current offense was committed within the original length of stay and the probationary sentence for the prior offense was revoked and the offender served an executed sentence:

- c. committed the current offense within the period of the initial length of stay pronounced by the sentencing judge for a prior felony, gross misdemeanor or an extended jurisdiction juvenile conviction. This policy does not apply if the probationary sentence for the prior offense is revoked, and the offender serves an executed sentence.

II.B.201. The basic rule assigns offenders one point if they were under some form of criminal justice custody when the offense was committed for which they are now being sentenced. The Commission believes that the potential for a custody status point should remain for the entire period of the initial length of stay pronounced by the sentencing judge.

An offender who is discharged early but subsequently is convicted of a new felony within the period of the initial length of stay should still receive the consequence of a custody status point. If probation is revoked and the offender serves an executed sentence for the prior offense, eligibility for the custody status point ends with discharge from the sentence.

The Commission adopted a proposal to make the following technical changes to Section V. OFFENSE SEVERITY REFERENCE TABLE and the *Theft Offense List*:

- IX ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(a)
- V ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(b)
- IV Negligent Fires - Great Bodily Harm – 609.576 subd. 1~~(a)~~ (1)
- III ~~Prostitution (Patron)~~ Engage or Hire a Minor to Engage in Prostitution - 609.324, subd. 1(c)
- II Negligent Fires - Damage ~~Exceeds \$2,500 or more~~ – 609.576 subd. 1~~(b)~~(3)(iii)
- ~~Excise Tax on Alcoholic Beverages—297C.13, subd. 1~~
~~Liquor Taxation-Criminal Penalties 297G.19 subd. 3, 4(c), 5(c)~~
- I ~~Motor Vehicle Taxes—296.25, subd. 1(b)~~
~~Tax on Petroleum and Other Fuels-Willful Evasion 296A.23 subd. 2~~
- Pistol w/out Permit (subsequent violations) - 624.714 subd. 1~~(a)~~ a

Theft Offense List

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

~~Theft by Soldier of Military Goods~~
~~192.36~~