

Minnesota Sentencing Guidelines Commission

Proposed Amendments to the Sentencing Guidelines and Commentary Effective* Date: August 1, 2016

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Wednesday, December 23, 2015, at 2:00 p.m. in Room 10, at the State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155. The Commission will consider the following proposed amendments to the Sentencing Guidelines and Commentary resulting from non-legislative amendments.

The Commission will hold the record open for six days after the public hearing to accept written comment. On Wednesday, December 30, 2015, the Commission will meet at 2:00 p.m. in Room 230 at the Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155, to formally adopt or reject the proposed amendments. If adopted, amendments would become effective August 1, 2016, unless the Legislature by law provides otherwise.

A. Non-Legislative Amendments to Controlled Substance Offenses.

The following non-legislative amendments to the Minnesota Sentencing Guidelines related to drug offense sentencing are proposed.

Section 1.B. Definitions

As used in these Sentencing Guidelines (or "Guidelines"), the following terms have the meanings given.

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15. Sentencing Guidelines Grids. The "Sentencing Guidelines Grids" (or "Grids") display presumptive sentences for felony offenses according to

*A presumptive sentence is determined by the Sentencing Guidelines in effect on the date of offense. Minn. Sentencing Guidelines § 2.

the severity level of the offense (vertical axis) and offender's criminal history score (horizontal axis).

- a. Sex Offender Grid. The "Sex Offender Grid" displays the presumptive sentences for criminal sexual conduct, failure to register as a predatory offender, and related offenses as shown on the Sex Offender Grid.
- b. Drug Offender Grid. The "Drug Offender Grid" displays the presumptive sentences for controlled substance crime, failure to affix stamp, and related offenses as shown on the Drug Offender Grid.
- c. ~~b.~~ Standard Grid. The "Standard Grid" displays the presumptive sentences for felony offenses not on the Sex Offender Grid or Drug Offender Grid. * * *

17. Severity Level. The "severity level" is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into eight severity levels, ranging from high (Severity Level A) to low (Severity Level H). Drug offenses are arranged on the Drug Offender Grid into ten levels of severity, ranging from high (Severity Level D10) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

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Section 2.B Criminal History

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1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and

b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

- a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D8	1 ½
	9 – 11, D9 – D10	2
	Murder 1 st Degree	2
	A	2
	B – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

- b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D8	1 ½
	9 – 11, D9 – D10	2
	Murder 1 st Degree	2
	A	3
	B – C	2
	D – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)

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Section 2.C Presumptive Sentence

1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). The conviction offense determines the severity level. The offender’s criminal history score is computed according to section 2.B above. For cases contained in cells outside of the shaded areas, the sentence should be executed. For cases contained in cells within the shaded areas, the sentence should be stayed unless the conviction offense carries a mandatory minimum sentence.

Each cell on the ~~Standard Grid and the Sex Offender Grids~~ provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence. The shaded areas of the

grids do not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum. * * *

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Section 2.D Departures from the Guidelines

3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that 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 but not a mandatory minimum sentence, and either of the following exist:
 - (a) The current conviction offense is at Severity Level 1 or Severity Level 2 and the offender received all of his or her prior felony sentences during fewer than three separate court appearances; or

- (b) The current conviction offense is at Severity Level 3 or Severity Level 4 and the offender received all of his or her prior felony sentences during one court appearance.
- (5) Other substantial grounds exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense.
- (6) The court is ordering an alternative placement under Minn. Stat. § 609.1055 for an offender with a serious and persistent mental illness.
- (7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.
- (8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152 (2014).

b. Aggravating Factors.

* * *

- (5) The offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual offense. The presence of two or more of the circumstances listed below are aggravating factors with respect to the offense:

- (a) the offense involved at least three separate transactions wherein controlled substances were sold, transferred, or possessed with intent to do so;
- (b) the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;
- (c) the offense involved the manufacture of controlled substances for use by other parties;
- (d) the offender knowingly possessed a firearm during the commission of the offense;
- (e) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
- (f) the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or
- (g) the offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationships (e.g., pharmacist, physician or other medical professional);
- (h) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;
- (i) the offense involved the transfer of controlled substance across a state or international border and into Minnesota;
- (j) the offense involved the sale of a controlled substance to a minor or vulnerable adult; and
- (k) the defendant, or an accomplice, manufactured, possessed or sold a controlled substance in a school zone, park zone, public housing zone, federal, state, or local correctional facility, or drug treatment facility. * * *

Section 2.E Mandatory Sentence

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2. Specific Statutory Provisions. The following mandatory minimum provisions should be imposed as indicated.

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- c. Subsequent Drug Offenses Involving a Dangerous Weapon. If an offender is sentenced for a second or subsequent drug offense and is subject to Minn. Stat. § 609.11, subd. 5a, the presumptive duration is the longer of either:

- (1) the mandatory minimum sentence for the subsequent drug offense added to the mandatory minimum sentence for the dangerous weapon involvement; or

- (2) the presumptive duration for the subsequent drug offense provided in the appropriate cell on the ~~Standard~~ Drug Offender Grid. * * *

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2.E.05. Minn. Stat. § 609.11, subd. 5a, states that for a subsequent drug offense involving a weapon, the mandatory minimum duration for the drug offense and the mandatory minimum duration for the weapon offense are added together. The Guidelines presumptive duration is determined by comparing the total sum of the combined mandatory minimums and the duration found in the appropriate cell on the ~~Standard~~ Drug Offender Grid for the subsequent drug offense; the presumptive duration is the longer of the two. For example: A third-degree drug offender with a Criminal History Score of 3 is convicted of a subsequent controlled substance offense and was in possession of a firearm.

*Mandatory Minimums: 24 months Mand. Min. (Minn. Stat. § 152.023, subd. 3(b))
+ 36 months Mand. Min (Minn. Stat. § 609.11, subd. 5(a))
= 60 months*

vs.

Grid Cell: =39 months (Severity Level D6; Criminal History Score of 3).

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Section 5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law. * * *

Severity Level	Offense Title	Statute Number
9	Controlled Substance Crime 1st Degree	152.021
9	Manufacture Any Amount of Methamphetamine	152.021, subd. 2a(a)
9	Importing Controlled Substances Across State Borders	152.0261
8	Controlled Substance Crime 2nd Degree	152.022
6	Controlled Substance Crime 3rd Degree	152.023
6	Failure to Affix Stamp on Cocaine	297D.09, subd. 1
6	Failure to Affix Stamp on Hallucinogens or PCP	297D.09, subd. 1
6	Failure to Affix Stamp on Heroin	297D.09, subd. 1
6	Failure to Affix Stamp on Remaining Schedule I & II Narcotics	297D.09, subd. 1
5	Possession of Substances with Intent to Manufacture Methamphetamine	152.0262
-4	Controlled Substance Crime 4th Degree	152.024
3	Anhydrous Ammonia (Tamper/Theft/Transport)	152.136

3	Methamphetamine Crimes Involving Children and Vulnerable Adults	152.137
2	Controlled Substance in the 5th Degree	152.025
2	Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics	297D.09, subd. 1
2	Medical Cannabis Violations (Submission of False Records)	152.33, subd. 4
2	Sale of Synthetic Cannabinoids	152.027, subd. 6(c)
1	Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols	297D.09, subd. 1
1	Failure to Affix Stamp on Schedule IV Substances	297D.09, subd. 1
1	Medical Cannabis Violations (Intentional Diversion)	152.33, subd. 1
1	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	152.33, subd. 2
1	Sale of Simulated Controlled Substance	152.097

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Severity Level	Offense Title	Statute Number
<u>D10</u>	<u>Manufacture Any Amount of Methamphetamine</u>	<u>152.021, subd. 2a(a)</u>
	<u>Importing Controlled Substances Across State Borders</u>	<u>152.0261</u>
<u>D9</u>	<u>Controlled Substance Crime 1st Degree (Sale)</u>	<u>152.021, subd. 1</u>
<u>D8</u>	<u>Controlled Substance Crime 1st Degree (Possession)</u>	<u>152.021, subd. 2(a)</u>

<u>D7</u>	<u>Controlled Substance Crime 2nd Degree</u>	<u>152.022</u>
<u>D6</u>	<u>Controlled Substance Crime 3rd Degree</u>	<u>152.023</u>
	<u>Failure to Affix Stamp on Cocaine</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Hallucinogens or PCP</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Heroin</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Remaining Schedule I & II Narcotics</u>	<u>297D.09, subd. 1</u>
<u>D5</u>	<u>Possession of Substances with Intent to Manufacture Methamphetamine</u>	<u>152.0262</u>
<u>D4</u>	<u>Controlled Substance Crime 4th Degree</u>	<u>152.024</u>
<u>D3</u>	<u>Anhydrous Ammonia (Tamper/Theft/Transport)</u>	<u>152.136</u>
	<u>Methamphetamine Crimes Involving Children and Vulnerable Adults</u>	<u>152.137</u>
<u>D2</u>	<u>Controlled Substance Crime 5th Degree</u>	<u>152.025</u>
	<u>Failure to Affix Stamp on Remaining Schedule I, II, & III Non-Narcotics</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Submission of False Records)</u>	<u>152.33, subd. 4</u>
	<u>Sale of Synthetic Cannabinoids</u>	<u>152.027, subd. 6(c)</u>
<u>D1</u>	<u>Failure to Affix Stamp on Marijuana/Hashish/Tetrahydrocannabinols</u>	<u>297D.09, subd. 1</u>
	<u>Failure to Affix Stamp on Schedule IV Substances</u>	<u>297D.09, subd. 1</u>
	<u>Medical Cannabis Violations (Intentional Diversion)</u>	<u>152.33, subd. 1</u>

<u>D1</u>	<u>Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)</u>	<u>152.33, subd. 2</u>
	<u>Sale of Simulated Controlled Substance</u>	<u>152.097</u>

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Section 5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law. * * *

Statute Number	Offense Title	Severity Level
152.021, <u>subd. 1</u>	Controlled Substance Crime 1st Degree (Sale)	<u>D9</u>
<u>152.021, subd. 2(a)</u>	<u>Controlled Substance Crime 1st Degree (Possession)</u>	<u>9D8</u>
152.021, subd. 2a(a)	Manufacture Any Amount of Methamphetamine	<u>9D10</u>
152.022	Controlled Substance Crime 2nd Degree	<u>8D7</u>
152.023	Controlled Substance Crime 3rd Degree	<u>D6*</u>
152.024	Controlled Substance Crime 4th Degree	<u>D4</u>
152.025	Controlled Substance Crime 5th Degree	<u>D2</u>
152.0261	Importing Controlled Substances Across State Borders	<u>9D10</u>
152.0262	Possession of Substances with Intent to Manufacture Methamphetamine	<u>D5</u>

* See section 2.C and Appendix 1 to determine the presumptive disposition.

152.027, subd. 6(c)	Sale of Synthetic Cannabinoids	<u>D2</u>
152.097	Sale of Simulated Controlled Substance	<u>D1</u>
152.136	Anhydrous Ammonia (Tamper/Theft/Transport)	<u>D3</u>
152.137	Methamphetamine Crimes Involving Children and Vulnerable Adults	<u>D3</u>
152.33, subd. 1	Medical Cannabis Violations (Intentional Diversion)	<u>D1</u>
152.33, subd. 2	Medical Cannabis Violations (Diversion by patient, registered Designated Caregiver, or Parent)	<u>D1</u>
152.33, subd. 4	Medical Cannabis Violations (Submission of False Records)	<u>D2</u>
297D.09 subd. 1	Failure to Affix Stamp on Cocaine	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Hallucinogens or PCP (Angel Dust), Incl. LSD	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Heroin	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I and II Narcotics	<u>D6</u>
297D.09 subd. 1	Failure to Affix Stamp on Remaining Schedule I, II, & III Non Narcotics	<u>D2</u>
297D.09 subd. 1	Failure to Affix Stamp on Marijuana/Hashish/ Tetrahydrocannabinols	<u>D1</u>
297D.09 subd. 1	Failure to Affix Stamp on Schedule IV Substance	<u>D1</u>

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Section 4.A. Sentencing Guidelines 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.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (<i>unintentional murder</i>)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree; Controlled Substance Crime, 2nd Degree</i> <i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84^{2, 3}</i>
<i>Controlled Substance Crime, 3rd Degree</i> <i>Assault, 2nd Degree</i> <i>Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary; Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance Assault, 4th Degree</i> <i>Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at 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 area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1-2.

³ The stat. max. for Financial Exploitation of Vulnerable Adult is 240 months; the standard range of 20% higher than the fixed duration applies at CHS 6 or more. (The range is 62-86.)

Effective August 1, 2016

Section 4.C Drug Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denotes range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subjected to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Manufacture Any Amount of Methamphetamine</i>	D10	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Controlled Substance Crime, 1st Degree Sale</i>	D9	65 <i>56-78</i>	75 <i>64-90</i>	85 <i>73-102</i>	95 <i>81-114</i>	105 <i>90-126</i>	115 <i>98-138</i>	125 <i>107-150</i>
<i>Controlled Substance Crime, 1st Degree Possession</i>	D8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Controlled Substance Crime, 2nd Degree</i>	D7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-86</i>
<i>Controlled Substance Crime, 3rd Degree Failure to Affix Stamp</i>	D6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Possess Substances with Intent to Manufacture Meth</i>	D5	18	23	28	33 <i>29-39</i>	38 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Controlled Substance Crime, 4th Degree</i>	D4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Meth Crimes Involving Children and Vulnerable Adults</i>	D3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Controlled Substance Crime, 5th Degree</i>	D2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated Controlled Substance</i>	D1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment.



Presumptive stayed sentence; at 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 area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

Examples of Executed Sentences (Length in Months) Broken Down by:

Term of Imprisonment and Supervised Release Term

Under Minn. Stat. § 244.101, offenders committed to the Commissioner of Corrections for crimes committed on or after August 1, 1993 will receive an executed sentence pronounced by the court consisting of two parts: a specified minimum term of imprisonment equal to two-thirds of the total executed sentence and a supervised release term equal to the remaining one-third. The court is required to pronounce the total executed sentence and explain the amount of time the offender will serve in prison and the amount of time the offender will serve on supervised release, assuming the offender commits no disciplinary offense in prison that results in the imposition of a disciplinary confinement period. The court must also explain that the amount of time the offender actually serves in prison may be extended by the Commissioner if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender's serving the entire executed sentence in prison.

<u>Executed Sentence</u>	<u>Term of Imprisonment</u>	<u>Supervised Release Term</u>	<u>Executed Sentence</u>	<u>Term of Imprisonment</u>	<u>Supervised Release Term</u>
12 and 1 day	8 and 1 day	4	58	38 2/3	19 1/3
13	8 2/3	4 1/3	60	40	20
15	10	5	65	43 1/3	21 2/3
17	11 1/3	5 2/3	66	44	22
18	12	6	68	45 1/3	22 2/3
19	12 2/3	6 1/3	72	48	24
21	14	7	75	50	25
23	15 1/3	7 2/3	78	52	26
24	16	8	85	56 2/3	28 1/3
27	18	9	86	57 1/3	28 2/3
28	18 2/3	9 1/3	88	58 2/3	29 1/3
30	20	10	95	63 1/3	31 2/3
33	22	11	98	65 1/3	32 2/3
36	24	12	105	70	35
38	25 1/3	12 2/3	108	72	36
39	26	13	110	73 1/3	36 2/3
42	28	14	115	76 2/3	38 1/3
43	28 2/3	14 1/3	122	81 1/3	40 2/3
45	30	15	125	83 1/3	41 2/3
48	32	16	134	89 1/3	44 2/3
51	34	17	146	97 1/3	48 2/3
54	36	18	158	105 1/3	52 2/3
57	38	19			

B. Non-Legislative Amendments to Consecutive Sentences

The following non-legislative amendments to the Minnesota Sentencing Guidelines related to consecutive supervised release are proposed.

Section 1.B. Definitions

As used in these Sentencing Guidelines (or "Guidelines"), the following terms have the meanings given.

1. Commitment. "Commitment" occurs when the offender is sentenced to the custody of the Commissioner of Corrections.
2. Concurrent Sentence. When the court orders sentences to be "concurrent," the court is ordering that multiple sentences be served at the same time.
3. Consecutive Sentence. When the court orders sentences to be "consecutive," the court is ordering that multiple sentences be served one after the other in the manner described in section 2.F.

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Section 2.F. Concurrent/Consecutive Sentences

Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.

This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure. When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.

If two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate supervised release period.

If a sentence is executed consecutively to an earlier executed sentence (executed at an earlier time or by a different court), and the offender has not yet been placed on supervised release for the earlier executed sentence, the Commissioner of Corrections must aggregate both terms of imprisonment into a single, fixed term of imprisonment. The offender will serve the longer of the two supervised release terms.

If a sentence is executed consecutively to an earlier executed sentence after the supervised release date for the earlier sentence, any remaining supervised release term from the earlier executed sentence is tolled while the offender serves the consecutive term of imprisonment. The offender will serve what remains of the previously tolled supervised release term or the supervised release term for the consecutive sentence, whichever is longer. * * *

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~~2.F.02. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. When a sentence is executed consecutively to another executed sentence on the same day and before the same court, the Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third and the periods of supervised release terms are aggregated and served consecutively as well. For example, if a court executes a 44-month fixed sentence, and a 24-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections aggregates the sentences into a single 68-month fixed sentence, with a specified minimum 45.3-month term of imprisonment and a specified maximum 22.7-month period of supervised release.~~

44 months (first sentence)
+24 months consecutive (second sentence)
=68 months (fixed sentence)
45.3 months (2/3 – term of imprisonment)
22.7 months (1/3 – supervised release)

For example, if a court executes a 60-month fixed sentence, and, at the same time, executes a 21-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections must aggregate the 40-month and 14-month terms of imprisonment into a single 54-month fixed term of imprisonment, and must aggregate the supervised release terms of 20 months and 7 months into a single 27-month fixed term of supervised release to be served consecutively, as illustrated below:

<i>1st: 40-mo. term of imprisonment</i>		<i>1st: 20-mo. supervised release term</i>	
	<i>2nd: 14-mo. term of imp.</i>		<i>2nd: 7-mo. s.r.t.</i>
<i>= 54-mo. aggregate term of imprisonment</i>		<i>= 27-mo. aggregate supervised release term</i>	

***2.F.03.** When two sentences are executed on different days or before different courts, the second sentence is consecutive to the first, and the offender has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated. The first supervised release term will not run during the aggregate term of imprisonment, but the supervised release terms will run at the same time as each other.*

For example, Judge A sentences an offender to a 60-month executed sentence. Judge B later sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. Neither of the offender’s two supervised

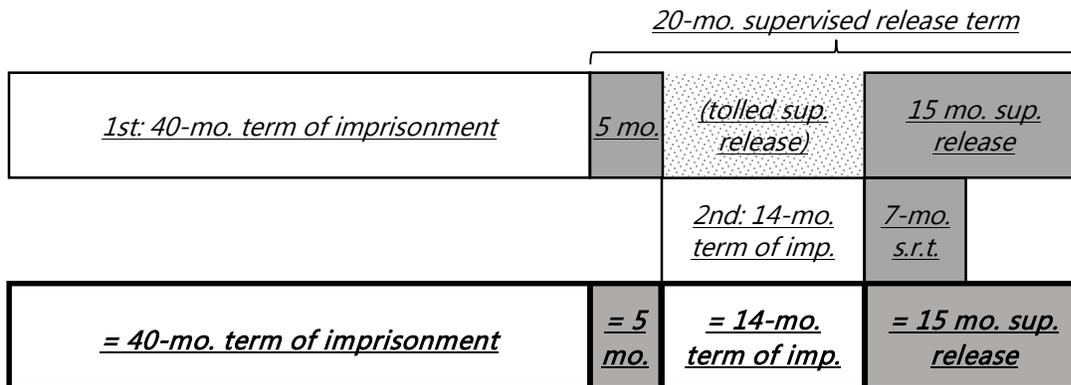
release terms will begin until the offender has completed the term of imprisonment (including disciplinary confinement) for both offenses. When the supervised release terms do begin, they will not be aggregated, as they would have been if the consecutive sentences were executed by the same judge at the same time. Instead, the longer supervised term release will effectively control the duration and they will run simultaneously, as illustrated below:

<u>1st: 40-mo. term of imprisonment</u>		<u>1st: 20-mo. supervised release term</u>
	<u>2nd: 14-mo. term of imp.</u>	<u>2nd: 7-mo. s.r.t.</u>
<u>= 54-mo. aggregate term of imprisonment</u>		<u>= 20-mo. supervised release term</u>

2.F.04. When an offender has already been placed on supervised release by the time the second, consecutive sentence is executed, the terms of imprisonment cannot be aggregated. In such a case, the first supervised release term stops running during the second term of imprisonment. When the offender is placed on supervised release for the consecutive sentence, the first supervised release term will resume; the offender will serve the remaining balance on the first supervised release term and the second supervised release term at the same time.

For example, Judge A sentences an offender to a 60-month executed sentence. The offender serves a 40-month term of imprisonment and is placed on supervised release for 20 months. Five months after being placed on supervised release, Judge B sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. During the ensuing 14-month term of imprisonment (and any disciplinary confinement thereafter), the first sentence's supervised release term is tolled. Upon release, the offender will serve the

remaining balance of the original supervised release term (now 15 months) simultaneous to the service of the consecutive sentence's supervised release term. The longer supervised release term will effectively control the duration, as illustrated below:



1. Presumptive Consecutive Sentences.

a. Criteria for Imposing a Presumptive Consecutive Sentence.

Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender is was, at the time of the current offense:

(i) serving an executed ~~prison sentence~~; term of imprisonment, disciplinary confinement, or reimprisonment; or

(ii) on escape status from an executed ~~prison sentence~~ term of imprisonment, disciplinary confinement, or reimprisonment;

~~(iii) on supervised release; or~~

~~(iv) on conditional release following release from an executed prison sentence (see conditional release terms in section 2.E.3);~~

and

(2) the presumptive disposition for the current offense(s) is

~~commitment. The presumptive disposition for an escape from an~~

~~executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.~~

- b. Finding the Presumptive Disposition. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment. In all other cases, the presumptive disposition is determined using the criteria in section 2.C.
- c. ~~b.~~ Finding the Presumptive Duration. For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.
- d. ~~c.~~ Exception When Presumptive Concurrent Sentence is Longer. If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.
- e. Consecutive Sentences for Multiple Offenses. When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense. Permissive consecutive sentencing under section 2.F.2 is not a departure if it would result in a longer sentence than the sentence resulting from this rule.
- f. ~~d.~~ Departure Factor. If there is evidence that the defendant has provided substantial and material assistance in the detection or

prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.

g. e. Felony Driving While Impaired (DWI). Minn. Stat. § 169A.28 subd. 1 requires a consecutive sentence when the court sentences an offender for a felony DWI and:

(1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and

(2) the disposition for the current offense will be probation; **but not**

(3) when the disposition for the current offense will be commitment.

If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense. * * *

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2.F.103. A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an ~~offender inmate~~ with a Criminal History Score of 6 assaults a prison guard during his term of imprisonment and has only one month remaining until his supervised release term is scheduled to begin. ~~is on supervised release. The offender has one month remaining until the sentence expires when the offender commits a theft over \$5,000 (Severity Level 3).~~ The Guidelines would typically recommend that the ~~theft~~ assault run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.

1 month (before ~~expiration of sentence~~ scheduled supervised release date)

~~+13 months (Severity Level 3; Criminal History Score of 1)~~

~~=14 months consecutive~~

~~vs.~~

~~23 months concurrent (Severity Level 3; Criminal History Score of 6)
+12 mos. and 1 day (Severity Level 1; Criminal History Score of 1)
=13 mos. and 1 day, consecutive~~

vs.

19 months, concurrent (Severity Level 1; Criminal History Score of 6).

2.F.104. If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. ~~For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half—making the presumptive duration 29 months.~~

2. Permissive Consecutive Sentences.

- a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. ~~For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.~~

- (1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment, as outlined in section 2.C, and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the

consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

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b. Finding the Presumptive Duration. For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.

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*2.F.203. If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, ~~for~~ in the case of an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months. * * **